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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 18, 2005
1:44 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, MAY 18, 2005

16 1:44 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

MEMBER ABSENT

SENATOR ROY ASHBURN

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

RAYMOND W. HOLDSWORTH, Jr.
Trustees of the California State University

DENNIS J. BOYLE, Director
Department of Social Services

ASSEMBLYMAN JOHN J. BENOIT

ALLEN DAVENPORT
Service Employees International Union (SEIU)

FRANK MECCA, Executive Director
County Welfare Directors Association

KELLY BROOKS
California State Association of Counties

1 MIKE HERALD

2 Western Center on Law and Poverty

3 ROBERT T. SERTICH, Chief Deputy Director
4 Department of Social Services

5 ROBERT L. GARCIA, Chief Deputy Director
6 Department of Mental Health

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We will begin with the Governor's appointees who are appearing today. I'd like to ask Raymond Holdsworth to come up. He's a Trustee.

Welcome this afternoon.

MR. HOLDSWORTH: Thank you very much.

CHAIRMAN PERATA: You may present.

MR. HOLDSWORTH: Thank you.

Let me tell you just a little bit about myself very shortly. First I'd like to apologize for not being here with the rest of the Trustees on the fourteenth. I was out of state.

I was born in the Bronx. Both of my parents are high school graduates, never attended college. I went to public school all throughout high school, through Hackensack High School, when we moved to the suburbs. It seems like where ever I lived, when I was up to 17, it was a spot for Johnny Carson, on his late night show, to make fun of it.

After that I went away to school. During college, I worked an average of 25 to 30 hours a week at Lake Forest College, paying for my board and expenses. First one on either side of our families to graduate from college.

After that, I went to the Navy. Spent three years as an officer there. And upon leaving the Navy, went to Wharton School of Finance. Paid my way through it with a combination of GI Bill, loans, and working.

What I bring, I think, to the CSU --

1 CHAIRMAN PERATA: How did you get all the way
2 west?

3 MR. HOLDSWORTH: Well, what happened with that,
4 it's a funny story, when I was at the University of
5 Pennsylvania, I had a lot of friends who were Californians. I
6 had been from the Midwest through Vietnam and Japan in the
7 Navy.

8 I took one semester break for four weeks, drove
9 across the Golden Gate Bridge, and decided at that moment in
10 time that I was going to California. And at that time, I
11 graduated and moved out here and got a job. So, I thought it
12 was a wonderful state and been here ever since.

13 CHAIRMAN PERATA: Good for us.

14 MR. HOLDSWORTH: Couple of different things that
15 I think I bring to the University. One is a passion and a
16 long-time involvement in education. Served on a lot of
17 nonprofit boards. We founded two groups in Los Angeles in the
18 '90s. One was for technology for results in elementary
19 education. That was K through 6, which looked at how
20 particularly the inner cities, we could bring computers and
21 technologies to those schools to hard wire them, and to give the
22 kids an opportunity to learn through the computer.

23 The other one was one of three Friends of
24 Community Colleges, right around 1999 or so, when the community
25 colleges in LA were finding it very difficult to improve their
26 physical facilities. We coalesced the business community. I
27 was one of the three chairs of it. And we got both bond issues
28 passed, which raised about almost \$2 billion through the

1 business community and Friends for the Community Colleges there.

2 My background in business and finance, I think,
3 gives me an independent, analytical, sort of critical look to
4 how you run and how you manage a large complex organization.
5 And certainly Cal State is a large complex organization.

6 I've worked with a lot of diverse groups. I
7 think one of things that I have as a strength is working with
8 and coalescing opinions, and getting people to look at a
9 rational way of trying to look for solutions.

10 I have three letters that I'd like to enter into
11 the record: One from the student Trustee; one from Chancellor
12 Drummond, who's now Chancellor of the Cal State Community
13 College system; and the other one from the faculty Trustee who
14 could not be here today. I will give you those.

15 And I think the objective is to have an
16 analytical look, and problem solving is a real strength. When I
17 met with the staff, they asked what are the biggest challenges
18 that we had at Cal State? And I think there's about four or
19 five of them that I would like to address, and then really be
20 focused on as a Trustee should I be confirmed.

21 One is quality, and it's got to be both in the
22 education itself and the experience that our students have at
23 the University.

24 Second would be affordability and access. I
25 think this is an incredible thing for our students to have as
26 they come in, to be able to afford it, have access to it,
27 because it really is a road to a better life.

28 Third one is image of the University. I think

1 right now if you look at the image for students, for faculty,
2 for alumni, and for the business relationships that we have with
3 the University, we can really take this, and take it to another
4 notch up.

5 Time for graduation, both on folks transferring
6 into the school and for those who are first time. I
7 experienced, when I went away to college, my parents had never
8 been to college, so it was hard to ask them what's going on?
9 What could you tell me to do? So, I think the time of
10 graduation, while having accountability for the counselors, for
11 the department heads, for the deans, and the presidents to say
12 when somebody gets in, we need to give them good advice. We
13 need to make sure that they have the best possible advice. And
14 class availability is a critical issue that we're going to
15 tackle with.

16 And then the fifth one is, Cal State, if you look
17 at it, it's an economic engine, and it really touches every
18 facet of our educational system. And I believe that Cal State
19 can play a key role in having an educational ladder. There are
20 programs that we have just for kids, that goes into the
21 elementary system. Then what happened a year-and-a-half ago is
22 the Early Assessment Program. Getting our students in high
23 school ready to go to college is absolutely critical when you
24 think of the need, that only 43 percent could pass a math and
25 English proficiency test to get into the university system, we
26 have a long way to go. And I think the EAP will do a lot to
27 heighten that, to make it easier. And once we can get that
28 going, once we can get out of the transfers going, we'll see our

1 costs drop in that because we won't have so many children
2 wasting time looking at what we can do.

3 I know I was able to bring family, and a lot of
4 them are here in Sacramento. So, instead of doing that, and in
5 consideration of your time, here's a picture for all of my
6 family.

7 [Laughter.]

8 MR. HOLDSWORTH: This was at my in-laws' parents'
9 60th anniversary. So, you can see who they all are. The woman
10 standing next to me is my wife. She is a product of the
11 community college and also the Cal State system. She graduated
12 from Sonoma State when she was 32 years old with two of our
13 children. So, we understand what that's like, to go through
14 that.

15 SENATOR BOWEN: And the picture was taken at
16 Palos Verdes, right, with the mountains behind it?

17 MR. HOLDSWORTH: We were at Tahoe.

18 CHAIRMAN PERATA: That's the Palos Verdes
19 mountain. That's wonderful.

20 [Laughter.]

21 CHAIRMAN PERATA: When we had your colleagues
22 here, we had sort of a serial discussion on a number of issues.
23 So, you're going to be able to handle them all by yourself,
24 beginning with Senator Bowen's questions.

25 SENATOR BOWEN: Welcome. Nice to have someone
26 from the South Bay here.

27 MR. HOLDSWORTH: Thank you.

28 SENATOR BOWEN: Actually, my mom went to Lake

1 Forest College, and you are the only other person I think I have
2 ever encountered who's a Lake Forest --

3 MR. HOLDSWORTH: I'd like to meet her sometime.
4 That'd be great.

5 SENATOR BOWEN: Anyway, it's great to have you
6 here.

7 I raised one issue that I just want to lay out
8 for you. You'll be working on this issue. It has to do with
9 the charging of a fee, a surcharge, for credit card transactions
10 that are used to pay tuition.

11 As you may know, in the private sector it's
12 illegal for a credit card company to surcharge a transaction.
13 However, some governmental agencies, including some of the CSU
14 campuses, have begun adding a fee, calling it a convenience fee
15 rather than a surcharge, and therefore it doesn't violate the
16 law.

17 The problem, of course, is that if you make it
18 more difficult for students to register using a credit card, you
19 basically force them into the line where it is the most
20 expensive for them to register.

21 Also, the students who are most likely to need to
22 register with a credit card are those who don't have either a
23 personal savings account, or a parent or relative who can just
24 write the check.

25 So, in the discussion I'm concerned that we
26 focus, as we look at the issue of the credit cards, on not only
27 the cost savings in using a credit card instead of processing a
28 check or cash, but also how the law applies in other aspects of

1 California.

2 I look forward to having a good conversation with
3 you about that.

4 MR. HOLDSWORTH: I would like to do that because
5 there are -- there's two sides of it. I'd very much like to
6 discuss that with you.

7 SENATOR BOWEN: We just note that in the private
8 sector, there's a move towards credit cards because it costs
9 less: less of a float time; fewer problems with bad checks.
10 But when we look at it at the state level, we only look at the
11 cost of processing the credit card and not the savings.

12 So, what you're getting is just the summary of a
13 many year long frustration I have, and we'll discuss it off
14 line.

15 MR. HOLDSWORTH: Thank you.

16 CHAIRMAN PERATA: Senator Cedillo? Senator
17 Battin.

18 SENATOR BATTIN: Move the nomination.

19 CHAIRMAN PERATA: I have a couple of questions.
20 They actually go to your second issue of your priorities,
21 affordability.

22 How did the Trustees make the decision to cut
23 back on the institutional financial aid to students?

24 MR. HOLDSWORTH: Going from the 33 percent to the
25 25? I think that was a budget issue that was recommended last
26 year. That was the first time that it went down to 25 percent.

27 I think if you look at it, it would be goal, I
28 think, of the Trustees to get it up to 33, to back up to that if

1 we can handle it on a fiscal basis.

2 CHAIRMAN PERATA: I think you've addressed it in
3 your comments about affordability and access, so I would
4 strongly encourage that.

5 The other one is, one of the Trustees, whose name
6 either escapes me or I can't pronounce, was a former faculty
7 member at San Luis Obispo.

8 MR. HOLDSWORTH: George. I can't pronounce it
9 either, sir. We just refer to him as George.

10 CHAIRMAN PERATA: Well, when he taught a course
11 in weeds, I thought maybe it was like a football coach course,
12 but apparently it's a real major.

13 In any event, he was saying that our State
14 University system is 17 percent below the national average in
15 compensation to professors which, given the cost of living in
16 California, is a pretty shocking number.

17 Has that been, in the short time that you've been
18 there, has this been a topic of discussion at all?

19 MR. HOLDSWORTH: I think one of the things is
20 that there was a committee about a year-and-a-half ago that
21 looked into not only faculty salaries, but administration
22 salaries. And looking at it to take up at the September and
23 October meeting, depending upon what the budget implications of
24 it are.

25 But yes, it has far reaching implications because
26 you want to attract the very, very best people you can, and
27 you're going to see that impacting on the faculty as you get
28 into the urban areas and the impacted schools.

1 CHAIRMAN PERATA: Well, tell Chancellor Read that
2 we don't care about the administrative salaries.

3 MR. HOLDSWORTH: He's aware of that.

4 CHAIRMAN PERATA: You're going to give him that
5 message, too. I have no further questions.

6 Anyone here in support of the nominee? In
7 opposition? Fabulous.

8 Would you like to close?

9 MR. HOLDSWORTH: I just thank you very much for
10 the opportunity. I'm really looking forward to it.

11 CHAIRMAN PERATA: We thank you for serving.
12 Please call the roll.

13 SECRETARY WEBB: Bowen.

14 SENATOR BOWEN: Aye.

15 SECRETARY WEBB: Bowen Aye. Cedillo.

16 SENATOR CEDILLO: Aye.

17 SECRETARY WEBB: Cedillo Aye. Battin.

18 SENATOR BATTIN: Aye.

19 SECRETARY WEBB: Battin Aye. Perata.

20 CHAIRMAN PERATA: Aye.

21 SECRETARY WEBB: Perata Aye. Four to Zero.

22 CHAIRMAN PERATA: Four to zero, congratulations.

23 MR. HOLDSWORTH: Thank you very much.

24 CHAIRMAN PERATA: Mr. Assemblyman, it's an honor
25 to have you here, sir. Would you care to introduce?

26 ASSEMBLYMAN BENOIT: Thank you.

27 Chairman and Members of the Committee, I'd like
28 to take just a minute to introduce Dennis Boyle and recommend

1 his confirmation to the Committee. I'd like to share a little
2 brief background, if I could, about Dennis.

3 Dennis served his country as a Naval flight
4 officer in Vietnam, is a decorated veteran of that war. From
5 that experience he developed two passions, a love of flying and
6 a sincere desire to improve the lives of others.

7 Dennis started his civil service career at the
8 Department of Social Services in 1973, held progressively more
9 responsible positions, which led him to be in charge of the GAIN
10 program as it was implemented in a very successful,
11 compassionate way here, the education program for welfare
12 recipients.

13 In 1992, he came to my district in Riverside
14 County where he was the Director of the Department of Public
15 Social Services. In Riverside County, his accomplishments are
16 legendary, where he successfully implemented the reforms in
17 Riverside County that put a record-setting number of welfare
18 recipients back to work. He also put a record number of them
19 into education programs, and was recognized nationally for those
20 efforts with the Innovations in American Government Award in
21 1996.

22 Dennis has an excellent record of working
23 collaboratively with other stakeholders, as evidenced by many
24 diverse letters of support in your file. I have spoken to a
25 number of people who have worked very closely with him and are
26 my trusted confidants in the city. They could think of no finer
27 person to run the statewide organization.

28 Given his background and personal attributes, I

1 believe Dennis Boyle is the ideal candidate to shepherd the
2 Department of Social Services through the challenging times
3 ahead, and I'm pleased to introduce him to the Committee.

4 CHAIRMAN PERATA: Thank you, sir.

5 Welcome, Mr. Boyle.

6 MR. BOYLE: Thank you, Senator.

7 I just want to add to that. First of all, thank
8 you, Assemblyman, for making time to introduce me. I'm honored
9 that you would do that.

10 I'm honored to be here. I can think of no higher
11 honor that I've had in my career. I'm just tickled to death to
12 be a part of the state government, and a part of this
13 administration.

14 I would be pleased to answer questions that you
15 might have.

16 CHAIRMAN PERATA: Thank you.

17 Senator Bowen? Senator Cedillo? Senator Battin?

18 SENATOR BATTIN: Thank you, Mr. Chairman.

19 I think Assemblyman Benoit's words were
20 absolutely right. The GAIN Program in Riverside County was one
21 of the really highlights of a successful welfare to work
22 program.

23 I know during the welfare reform debates that we
24 had a few years ago when I was in the Assembly, I know that the
25 Wilson administration was looking at Riverside as a model of how
26 things should work, and that's because of our nominee's
27 leadership on it.

28 I'm very happy to move the nomination. Proud to

1 be from Riverside.

2 CHAIRMAN PERATA: I had forgotten about the GAIN
3 program. I was a county supervisor.

4 Kay Cisneros, is she from Riverside.

5 MR. BOYLE: Yes, Senator.

6 CHAIRMAN PERATA: We worked together.

7 First of all, I'm glad that you're willing to do
8 this job. So, I'm not about to queer it by saying too much, or
9 you might turn around and run.

10 [Laughter.]

11 CHAIRMAN PERATA: But there are obvious
12 concerns. Everything is improved by more financial support. We
13 can all stipulate to that.

14 In this year's budget, there has been a decrease
15 in a number of the areas that will touch on your department.
16 You've got, I think, a lot of interests that end up becoming
17 competitive to each other. They should be complimentary, but
18 they end up being competitive.

19 Have you thought at all about how to set the
20 priorities for the agency in this time and place, and whether or
21 not you would ever engage in long-term planning in the off
22 chance we ever had money?

23 MR. BOYLE: Senator, I've given a great deal of
24 thought to what I might want to accomplish during whatever
25 period of time I have here as part of this organization. And I
26 do come with a couple of passions that come out of my history.

27 The first one, of course, is Welfare to Work. I
28 believe that we have given short shrift over the last number of

1 decades to people just because they're poor. And we know now
2 that just because you're poor doesn't mean that you can't be a
3 worthwhile member of society, and doesn't mean that you can't do
4 something to improve yourself.

5 During the time that I was in Riverside, we put
6 well over 100,000 people on that road, and markedly reduced the
7 percentage of people that were in poverty because we gave them
8 that start. I intend to bring that, that sense of urgency, to
9 the state.

10 During the past five years, as I've been a
11 welfare director, I've looked around the state. I'm an active
12 member, and have been an active member, of the County Welfare
13 Directors Association. And the number of people who have moved
14 on who were involved during the time that you were with the GAIN
15 program has just markedly reduced. And people are forgetting
16 the lessons that we learned.

17 So, one of the things that I want to do is
18 refresh the minds of those who were here and instill some
19 passion in the folks who have come behind, because we know what
20 to do, we just need to do it. Make the best of the resources
21 that we have.

22 The second thing that I want to do, and I want to
23 acknowledge that there are literally dozens of important things
24 that we're going to be doing, and I don't mean to not give them
25 their due importance, but the second thing that I bring that I
26 want to instill and will require more resources as time goes on,
27 and that is, we've got to increase the level of safety that our
28 children enjoy in their homes and in the homes of those that

1 care for them if they're not living at home. And I think we've
2 got the beginnings and tools to do it, and our budget that we
3 have proposed for this year also reflects that importance.

4 So, those are the two things that I want to
5 concentrate on: breaking the cycle of dependency, and making
6 our kids safer where they are.

7 CHAIRMAN PERATA: I just thought of something.
8 Are you going to commute? Is he going to be your
9 driver?

10 [Laughter.]

11 MR. BOYLE: He's not a Navy pilot, so no, sir.

12 CHAIRMAN PERATA: I just wanted to point that
13 out. I'm glad you understood that.

14 MR. BOYLE: I fly up. My wife, who's here in the
15 audience with me, drops me off at Ontario Airport on Monday
16 mornings very, very early. She goes in to work at Kaiser
17 Hospital in Fontana, and then is good enough Friday night to
18 pick me up and take me home.

19 CHAIRMAN PERATA: So, you're not flying your
20 own --

21 MR. BOYLE: No.

22 CHAIRMAN PERATA: You know he does.

23 MR. BOYLE: I do.

24 ASSEMBLYMAN BENOIT: Navy pilots are a little
25 different.

26 [Laughter.]

27 CHAIRMAN PERATA: Another question I have is, and
28 I don't know this from the state, but I know of it from the

1 counties, because you have a common client oftentimes with
2 MediCal and SSI, or what have you. We fostered, and you must
3 have done this in Riverside, an interrelationship between the
4 various disciplines that serve the same client.

5 I would just encourage you to -- I'm sure you
6 would. I feel a little silly even telling you this. You're a
7 professional and I'm an interloper -- but that's something that
8 I would encourage, too, because I know oftentimes I realized how
9 different the state was from what was done at the county levels.

10 Which leads me to a question about the number of
11 vacancies we have, and the fact that counties compensate their
12 workers in most cases or in all cases much better than the
13 state. It used to be where you would use those as the farm
14 system and bring them up to major leagues, but now I'm sure that
15 it has just the opposite effect.

16 What do you do with situation like that? You're
17 right in the teeth of it.

18 MR. BOYLE: Well, a couple of things.

19 First of all, we're at a stage at the state where
20 we have a lot of people that came to work in public service with
21 my generation who are getting ready to retire. That
22 circumstance absolutely collides with the budget situation that
23 we've had the last couple of years, where we have had to cut
24 back on state government.

25 So, we do have large number of vacancies. We
26 have -- we have done two things within my department, and I
27 believe that we may serve as a model for other departments and
28 other agencies. We've begun a -- I'm forgetting the term for

1 when people leave, and you prepare them to step into their
2 place.

3 CHAIRMAN PERATA: It's not a golden parachute.

4 [Laughter.]

5 MR. BOYLE: No, it's not a golden parachute.

6 CHAIRMAN PERATA: That's the private sector.

7 MR. BOYLE: Succession planning program. Thank
8 you, Nettie.

9 In fact, my chief deputy, who you're going to be
10 talking to next, has taken the lead on that. And we're putting
11 a succession plan in place that involves bringing new blood in
12 at the bottom and training people for the top.

13 You can look at this as a very difficult time,
14 but I also choose to look at this as a time of opportunity that
15 we haven't seen since the 1970s. There are so many vacancies,
16 and so many people in leadership positions who are getting ready
17 to leave, that a young person who's interested in public
18 service, there is no better time for them to get started than it
19 is right now because the opportunities for promotion are going
20 to be unparalleled in the past 30 years.

21 So, that's what we're doing about it.

22 CHAIRMAN PERATA: Also, looking at the this
23 year's budget, there is a proposal, actually in the May
24 Revision, that would have a dramatic effect on in-home
25 services.

26 What I'd like to ask you to do is to give us --
27 not now -- but as best you can calculate the effect it might
28 have, and this is just a cost benefit analysis, I suppose, of

1 people who may end up institutionalized if, in fact, we begin to
2 go in the opposite direction of making the profession more
3 compensated.

4 I'm a great believer, first of all, and I don't
5 say this as a criticism of anybody, but of all the people in our
6 society that we want to hit, that's the last group.

7 But we have seen, since at least in the areas
8 that I serve, as we've raised the compensation to a whopping \$10
9 an hour, we have begun to stabilize the workforce. We have
10 begun to see people who don't have to work two and three jobs
11 because they can work one. And that we could attract anybody
12 who would do that job at all, I think, you know, if the recent
13 Pope needs a miracle, that would be one of them that would
14 qualify. It's a Catholic thing.

15 So, I would just like you, if you would for me,
16 just give a little thought to that particular issue, and
17 consider it a mandate so you don't have to worry about getting
18 sideways with anybody. But I'd really like to know.

19 We do too little of that. When you cut a
20 prevention program out, or a self-help program, you end up
21 paying for it usually somewhere else in the institution. So,
22 that would be another question.

23 And I just want to thank you for what you're
24 doing. A man of your stature, and someone who has done as much
25 as you have in the vineyards, I'm really glad that you're up
26 here to stomp on the grapes, and just assure you that this is an
27 area of high interest not only to me, but I think the Senate as
28 a whole.

1 We would always be amenable to suggestions and
2 recommendations. We tend to make laws sometimes that are based
3 upon anecdotes as opposed to any real evidence. So, if
4 something appears to be off kilter, or there's a better way of
5 approaching something, an idea at least, you know, you've heard
6 it publicly, knock on my door and talk to us about it.

7 With that, did any family come or do you have
8 pictures?

9 [Laughter.]

10 MR. BOYLE: Yes. The camera's not working, so I
11 brought the actual physical family.

12 And before I introduce them, if I may say one
13 thing. I appreciate Senator Battin's comments about Riverside
14 County and our fame at putting people to work.

15 I want to acknowledge someone who went before me.
16 I've been there for nine years, and the guy who went before me
17 is named Larry Townsend. And I took very careful notes on what
18 Larry Townsend taught me, and I don't want his name to be
19 forgotten as someone who was very, very important to this field.

20 CHAIRMAN PERATA: Thank you.

21 MR. BOYLE: I would like to introduce my family
22 to you, if I may. My wife is here. Her name is the Sherrie,
23 Sherrie Boyle.

24 One of my daughters, Amy Bredeson. Another
25 daughter, Jenny Burrows.

26 My friend, Jennifer Klugg. And my brother -- no
27 one here from Colusa -- my brother, Michael, who has recently
28 retired. Within two weeks, he hit two jackpots at Colusa Casino

1 for a total of 125,000 bucks, playing nickle Keno.

2 [Laughter.]

3 CHAIRMAN PERATA: Would you stay after class,
4 please?

5 SENATOR BOWEN: We're ready to take lessons.

6 [Laughter.]

7 CHAIRMAN PERATA: Is there anybody here in
8 support? He's in his mother's arms, so you can be very brief,
9 if you would.

10 MR. DAVENPORT: Mr. Chairman, Allen Davenport
11 With the Service Employees International Union.

12 As you know, we represent 85 percent of the --
13 workers who do 85 percent of the welfare work in California. We
14 represent three-quarters of the homecare workers.

15 I had the privilege of working with Dennis Boyle
16 in 1985 on the development of the GAIN program when I worked for
17 the State Senate.

18 I don't think you could find a man who, when you
19 make law, is going to go about helping you make it right in the
20 administration side, because that was a through program. We
21 developed it, and then we needed a team to work it through.
22 Dennis was an important part of that team.

23 We should all remember that in 1985, Welfare to
24 Work was a new idea.

25 CHAIRMAN PERATA: That's right.

26 MR. DAVENPORT: Second of all, I think you heard
27 from him, one of the things I've learned as I've been working in
28 and around the government for 30 years, that one of the

1 fundamental questions of government is, who's going to take care
2 of the poor?

3 And Dennis Boyle, as you've heard today, is a man
4 who thinks that's an important job to do.

5 Finally, I'm pleased to be able to make all these
6 recommendations personally, but he also got along very well and
7 comes highly recommended from Local 1997, the welfare workers
8 and county workers in Riverside County. So, we would commend
9 him to you highly.

10 CHAIRMAN PERATA: High praise. Thank you.

11 MR. MECCA: Thank you, Mr. Chairman. Frank
12 Mecca, Executive Director of the County Welfare Directors
13 Association, of which my friend, Dennis Boyle, is an honorary
14 life member with all of the privileges and honor --

15 [Laughter.]

16 MR. MECCA: -- that such bestows.

17 The County Welfare Directors in the state could
18 not be more pleased with his appointment, and couldn't be
19 happier with his confirmation.

20 He's obviously a leader in the field. You heard
21 about that. But he's extremely well respected among his peers
22 as a collaborator, a leader, and a consensus builder. And
23 frankly, this is a field where people who exhibit those traits
24 are in demand.

25 I personally want to tell you, I don't believe
26 that there's a person of higher integrity than Dennis, so I'm
27 happy personally to heartily endorse my friend, Dennis Boyle.

28 CHAIRMAN PERATA: Thank you.

1 MS. BROOKS: Kelly Brooks on behalf of the
2 California State Association of Counties.

3 We're in very strong support of Dr. Boyle's
4 confirmation today. We know him to be a man of impeccable
5 integrity and character. We're very pleased to have a former
6 county welfare director at the helm of the Department of Social
7 Services.

8 We know we may not always agree with him but we
9 know his door will be open to counties and to listening to our
10 concerns. So, we're very pleased to have him there.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. HERALD: Mike Herald, Western Center on Law
14 and Poverty.

15 We, too, support Mr. Boyle's nomination today.
16 Our organization is one of the organizations that tries to make
17 sure that the DSS indeed does serve the poor. We are not
18 infrequent litigants with the department.

19 But when Dennis came earlier this year, when we
20 met him for the first time, the thing I noticed is, he came to
21 our office, which is pretty much unheard of by DSS directors.
22 So, his openness to working with us, even as advocates, even as
23 we are litigators, and competing around legislation and the
24 budget, we have great respect for his openness and willingness
25 to work with us. And we think he'll do a great job.

26 CHAIRMAN PERATA: Thank you.

27 Any fool here want to come up in opposition?

28 [Laughter.]

1 CHAIRMAN PERATA: Seeing none, sir, you may
2 close.

3 MR. BOYLE: I just again want to say how pleased
4 I am to be here, and how proud I am to be a part of state
5 government. Thank you for your courtesy.

6 CHAIRMAN PERATA: Share that in kind.

7 Call the roll, please.

8 SECRETARY WEBB: Bowen.

9 SENATOR BOWEN: Aye.

10 SECRETARY WEBB: Bowen Aye. Cedillo.

11 SENATOR CEDILLO: Aye.

12 SECRETARY WEBB: Cedillo Aye. Battin.

13 SENATOR BATTIN: Aye.

14 SECRETARY WEBB: Battin Aye. Perata.

15 CHAIRMAN PERATA: Aye.

16 SECRETARY WEBB: Perata Aye. Four to Zero.

17 CHAIRMAN PERATA: Four to zero.

18 Congratulations.

19 MR. BOYLE: Thank you, sir.

20 CHAIRMAN PERATA: Thank you, Assemblyman, for
21 staying with us. Appreciate that.

22 Okay, we have Robert Sertich, Chief Deputy
23 Director.

24 You may want to stick around, see how he does.

25 Welcome.

26 MR. SERTICH: Thank you. Thank you, Mr. Chairman
27 and Members of the Rules committee.

28 I'd like to say a few words first, if that's

1 okay.

2 First, I'm privileged to be before this body to
3 be considered for confirmation for the job of Chief Deputy
4 Director of the Department of Social Services. I'm honored that
5 Governor Schwarzenegger, Secretary Belshe, and particularly
6 Director Dennis Boyle have their trust and faith in me to
7 perform the job on their behalf.

8 I bring to this job nearly 34 years of experience
9 in state government, including 25 years in executive capacities
10 in six different departments. I have previously served as a
11 deputy director in this department, the Department of Social
12 Services, for nearly 9 years during the 1980s and 1990s.

13 I'm also proud to be a native Californian. I
14 have lived in California all my life, and I've been educated in
15 California.

16 My wife is from a California pioneer family, and
17 through my wife's lineage, my three adult children are fifth
18 generation Californians.

19 I value my California roots, and I've dedicated
20 my career to state service. My experience in state service
21 includes: Management of the two largest budgets in Health and
22 Human Services, the Department of Social Services and Department
23 of Health Services; implementation of a major modernization
24 program in the employment tax program that saved the state
25 significant money and dramatically improved service to
26 employment taxpayers in California; and the management and
27 guidance of 1600 state employees that provided the direct
28 service of determining the disability status of individuals

1 under the Social Security and Medicaid Acts.

2 I believe I understand human service programs
3 from the funding, from the policy, and from the direct service
4 aspects.

5 I'm excited about the opportunity to assist in
6 leading the department to improve the lives of vulnerable and
7 less fortunate Californians. The department's goals of
8 self-sufficiency and protecting the safety of vulnerable
9 Californians are very important to me. I will do my best to
10 support these goals and to support the work of the Director,
11 Dennis Boyle, in doing that. He brings valuable experience as a
12 county welfare director to the state level, an experience that
13 has been very good for me to interchange ideas with, and I think
14 it will be very good for our programs that we administer at the
15 state.

16 I have a strong interest in making sure children
17 have a fair and positive start in life. I have a personal
18 connection that inspires me to ensure that people get a good
19 start. I was 11 years old when my father died. The illness
20 left my family with no resources other than a house. My mother
21 had not worked in 20 years. Single parent families were very
22 unusual at that time.

23 After a brief grieving period, my mother got back
24 on her feet, got a job that didn't pay a lot. Myself and my
25 three siblings also got jobs as we grew up to help supplement
26 the household income.

27 Through a combination of strong guidance of my
28 mother, and terrific support from a community of neighbors and

1 friends, my mother's children all became productive, independent
2 adults. We now have provided her nine wonderful grandchildren
3 as well.

4 The key to that is that we had tremendous support
5 from our community and friends. That's something that every
6 child should have. And where community and friends aren't
7 available, we need to look at alternatives to that community
8 that will help those children.

9 I've continued to be involved with children's
10 activities as an adult. I was President of Land Park Little
11 League for five years. I was President of McClatchy Band
12 Boosters. I was involved with the HSS Program at McClatchy High
13 School. In fact, I was the Parent of the Year in 1977 at
14 McClatchy High School. I've also been involved with Boy Scouts.
15 I continue to take one week a year off from vacation to cook for
16 a Boy Scout Camp in the Sierras. I stay involved.

17 I realize that this position has a major
18 challenge, or many major challenges before it. The challenges
19 include: recommending options for balancing a very large and
20 difficult budget; improving the delivery of services by
21 identifying best practices; and working with the counties and
22 constituencies to implement those practices.

23 And finally, we must maintain and improve our
24 performance to meet federal performance measures and make sure
25 that the state isn't penalized.

26 This position represents significant challenges
27 and tasks. However, I know that every problem is a new
28 opportunity for success, and everyday is a chance to make an

1 idea real. I think I'm up to that task.

2 I thank you for the opportunity to present myself
3 today, and will try to answer any questions that you may have.

4 CHAIRMAN PERATA: Thank you.

5 Senator Bowen.

6 SENATOR BOWEN: Thank you, Senator Perata.

7 Just a few questions. I don't think there's any
8 surprises here because they're all ones that you were asked.

9 A few issues caught my attention. One has to do
10 with the resources that the Community Care Licensing Division
11 has for on-site inspections of foster care facilities and
12 childcare facilities.

13 I'm told that there has been a significant
14 increase in the compliant level from parents, social workers,
15 and others in the facilities. We just went to a reduced
16 inspection schedule.

17 Can you talk a little bit about how that's
18 working? Whether you think that the reduced inspection schedule
19 meets the needs of Californians for ensuring the health and
20 safety of --

21 MR. SERTICH: This is a major challenge that
22 we're facing. I talked about several major challenges.

23 Three years ago the Legislature, as part of the
24 budget process, based on a recommendation from that
25 administration, did change the inspections schedule for
26 licensing visits for childcare programs, foster care residences,
27 senior residences, all the things in community care.

28 It's been a tough transition. This year, fiscal

1 year 2004-5, we're doing much better than we were doing in
2 2003-4, the year that it was implemented. We're visiting about
3 20 percent more facilities this year than we visited last year.

4 We are falling slightly short of our mandated
5 requirement about 85 percent of the mandatory visits. However,
6 we are meeting all of our complaint visits. That's when a
7 parent, or a relative, or a neighbor makes a complaint about a
8 facility. We're meeting those 98 percent of the time.

9 We're also making visits and following up when a
10 facility reports a problem to us, like an injury to a resident,
11 or electricity going out, or something like that. We follow up
12 on those on our own. Those aren't mandated.

13 We have work to do. The Community Care Division
14 had significant vacancies at the beginning of this fiscal year,
15 when I first showed up at the department, had some morale issues
16 because of the major change.

17 I think we can meet the challenge. We have a
18 major -- we have the first major exam for licensing analysts
19 statewide that the department's conducted in 15 years going on
20 right now. And by early summer, we should be able to fill 70 to
21 100 vacancies in those classifications.

22 We're looking at a number of changes to support
23 staff better: training, automation of simple office systems
24 that should have been done a long time ago that will support the
25 staff better, and it will allow management to have better access
26 to better information about what's going on.

27 We've made big progress this year.

28 SENATOR BOWEN: What kind of systems are you

1 still doing --

2 MR. SERTICH: My understanding, we're looking at
3 putting things like middle wear between systems that exist in
4 each office and headquarters and all the offices so we can
5 gather information. We're looking at allowing staff to enter
6 data into a web-based system that can be transmitted to the
7 department quickly so we can tell you better -- we've had a
8 difficult time telling you and others who have asked about where
9 we are with licensing reviews because we've had to collect a lot
10 of it manually. We actually think we may have under-reported a
11 little bit in terms of how we're doing.

12 We think if we're given another year to improve
13 the system, we can get the shelves stocked, and we can get the
14 production out that we need.

15 The specific question you asked is whether the
16 change to a 10 percent random review is adequate. That,
17 combined with the follow-ups that we do on complaints, and our
18 own follow-ups that we do on what we call incident reports from
19 facilities should give us the kind of information, and should
20 give us the coverage.

21 Complaints by neighbors and relatives end up with
22 a higher citation level than our random visits do.

23 Licensing has to be a community effort. Parents
24 who are dropping their children off at daycare, if they see
25 something awry, should first connect with the provider, but then
26 report to us. That's where we get most of our good information.
27 When we have random visits, we do find complaints, but more
28 citationable offenses, but more of it comes from complaints.

1 And we're following up on those almost 100 percent of the
2 time.

3 SENATOR BOWEN: I would imagine that there would
4 be a difference the between the complaint rates at childcare
5 facilities and at foster care facilities because, by their
6 nature, there's nobody picking up and dropping off kids at
7 foster care facilities.

8 MR. SERTICH: We're finding complaint -- as we
9 get into this, we're finding that complaint rates in childcare
10 facilities and facilities that have some other interested party,
11 like a facility that has foster children in it where a county
12 social worker is visiting, or facilities that have
13 developmentally disabled in them where a regional center case
14 worker's visiting, we do get higher complaint rates. And that's
15 good because even -- even if we were visiting under the old law,
16 which is once every two or three years, we wouldn't be picking
17 up all this information.

18 We need to get information out to people about
19 getting information back to us. But we have a lot of work to do
20 though.

21 SENATOR BOWEN: All right.

22 Second question has to do with federal funds and
23 food stamps. Perhaps I should have asked this of the gentleman
24 who just won all the money in the nickle Keno game.

25 [Laughter.]

26 SENATOR BOWEN: We're leaving a lot of money on
27 the table, which is why I said perhaps he was the right person
28 to ask.

1 How can we do a better job of getting and
2 distributing all the federal funds that are available for our
3 food stamp program?

4 MR. SERTICH: First off, we are continuing to try
5 to do a better job.

6 I think the statistics are a little bit
7 misleading, in that in California, we don't -- the federal
8 government and us, through an agreement that was made in 1973,
9 do not allow food stamps for Supplemental Security Income
10 recipients. There's a small payment addition built into the
11 rate. But that's a million people that aren't counted in
12 California under the food stamp rolls.

13 UC Berkeley did a study a couple years ago that
14 showed if we included those in both halves of the equation, that
15 we would actually be above the national average in California.
16 That's one issue.

17 Another issue over the last couple years, we have
18 improved several percentage points in our food stamp
19 participation rate with the federal government, that the federal
20 government issues.

21 We have to do other things. We have to just take
22 advantage of opportunities, look around, and make sure that our
23 folks are getting food stamps that should get food stamps.

24 You know, we've connected with farmers market
25 programs. We've connected with other programs to try to improve
26 that participation rate.

27 It's a matter of, I think, working with the
28 counties and working with the advocate groups to try to see

1 where opportunities are missed. We haven't done all that yet.
2 We need to do that, and I think that would be the key.

3 SENATOR BOWEN: I will just note that you're
4 working on the release of confidential data problem, and that
5 working groups are coming, and indicate that a number of us will
6 be following that, and ask about one last policy area, which
7 comes from a hearing that the Women's Caucus held on the
8 proposed budget reductions. This should be a question that's of
9 vital interest to you.

10 It appears that a lot of the cuts are really
11 borne most heavily by households headed by women. And the
12 Women's Caucus has been very concerned about the impact on
13 recipients of SSI, CalWorks households which are 80 percent
14 female head of households, and IHSS, both service providers and
15 recipients, not surprisingly since women live longer than men,
16 tend to need IHSS services over a longer period of time.

17 Are you looking at these in any kind of
18 systematic way? How do we address this issue?

19 Maybe the answer is, it's not my job.

20 MR. SERTICH: No, no. Part of it is our job for
21 sure. We don't develop the revenue side, but looking at
22 expenditures or programs across the board and seeing what can be
23 reduced and what shouldn't be reduced is a difficult thing.

24 I've been in state government for 34 years, and
25 most of that time I've been either managing budgets or directly
26 involved with programs. Prop. 13, the recession of the early
27 '90s. This year's budget certainly presents a challenge even
28 beyond what those did.

1 We would not recommend those kinds of reductions
2 if it weren't for the revenue, the need to bring expenditures in
3 closer line with revenue.

4 The reductions we've proposed, the major
5 reductions we've proposed, there're two. There's a reduction in
6 the CalWorks Grant along with no cost of living, and a reduction
7 in the state participation in the wages for in-home supportive
8 services. Both of those are unfortunate proposals that we put
9 on the table for consideration.

10 They were lined up against issues like actually
11 reducing eligibility and services for other client groups in
12 areas like MediCal or Healthy Families, or actually reducing
13 eligibility, tightening eligibility standards in in-home
14 supportive services, or CalWorks or others. These are not --
15 these are not great decisions to have to deliberate.

16 We did not -- we will be honest -- we did not
17 focus exclusively on how it impacted women-led households. But
18 had we not done -- had we not proposed these issues for
19 consideration, we would have had to take money out of education,
20 reduce other services in other areas which are just as
21 essential.

22 In IHSS, the program's grown dramatically over
23 the last five years since prior Legislature and Governor did
24 offer the counties funds to keep up with collective bargaining
25 agreements, simple way to say that.

26 We're saying that we will go back to fund our
27 basic share, and if counties want to put their money in for
28 increased wages, then they can do that. Not a great solution,

1 but something that needs to be considered.

2 CalWorks grants have been reduced before and
3 COLAs have been denied. We did have a proposal in the original
4 budget that also reduced the income disregard. We restored that
5 in May because we recognized that that really rewards folks who
6 are trying to work.

7 So, there's a lot of issues here, none of which
8 were great ones, but the bottom line is we were trying to avoid
9 any restrictions in services and eligibility with modest cost
10 reductions as a counter balance.

11 SENATOR BOWEN: As we go forward, I just think
12 that it's really important to know, and I know with your
13 background you're going to be very attuned to it, but, you know,
14 what we're trying to do with a lot of these programs, there's
15 two basic things we're trying to do.

16 One is to move people to working and to being
17 self-sufficient, and in fact being taxpayers. So, we're always
18 going to have this intention between what we invest now to
19 achieve that, and what kind of results we get. The Riverside
20 GAIN program is famous for its results, and the state taxpayers
21 are far better off now as a result of the good work that was
22 done in Riverside County and in other places in the GAIN
23 program.

24 But there's a particular need, I think, to really
25 look overall at how some of the cuts impact women, and in
26 particular female heads of households, just because there's a
27 larger incidence of poverty. We're still in a situation where
28 more women have custody and financial responsibility than men.

1 Perhaps in 20 or 30 years that will change. Maybe we'll even be
2 looking at the disadvantages that male head of households have,
3 I don't know.

4 And then, of course, a number of proposals that
5 we've seen, ranging from changing to defined contribution plans
6 to changes to IHSS disproportionately affect women because they
7 live 4.2 years longer and therefore are in need of services and
8 a retirement revenue stream for a longer period of time.

9 I would just ask as we go forward --

10 MR. SERTICH: I hope we have more years, more
11 times in more budget years to discuss these items, because I
12 think you're right, they're important.

13 In my background, I do recognize that one person
14 supporting a family is a very difficult situation.

15 SENATOR BOWEN: Of either gender. It just so
16 happens that there are more women trying to pull it off than
17 men.

18 Thank you.

19 CHAIRMAN PERATA: Senator Battin.

20 SENATOR BATTIN: I'll move the nomination.

21 CHAIRMAN PERATA: I was noting that you've had a
22 number of different experiences in state government in a number
23 of different areas.

24 What's most intriguing is that you graduated from
25 Stanford. I don't think I've seen anybody in public service
26 that's dedicated his career that had a Stanford degree.

27 MR. SERTICH: My brother is a UC grad. He's a
28 banker.

[Laughter.]

CHAIRMAN PERATA: That Stanford stuff runs deep.

Well, I want to thank you for your career here.

Both you and your boss have really acquitted yourselves very well. Proud to have association. Look forward to having a continued discussion with you.

Do you have family?

MR. SERTICH: Yes I do. I have three members of my family here. My wife, Celia, and my daughter, Abigail, and my son, Tony, who's a state employee as well. And my wife's a teacher.

CHAIRMAN PERATA: Perfect.

With that, we have a motion to approve. Please call the roll.

Oh, any support or opposition? We'll stipulate.

[The Committee noted that FRANK

MECCA and MIKE HERALD indicated

support for confirmation.]

SECRETARY WEBB: Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

1 MR. SERTICH: Thank you.

2 CHAIRMAN PERATA: Our final appointee is
3 Mr. Garcia, Robert Garcia, Chief Deputy Director, Department of
4 Mental Health.

5 Welcome, sir.

6 MR. GARCIA: Thank you, Mr. Chairman, Members of
7 the Rules Committee. Happy to be here this afternoon.

8 I want to thank you for the opportunity to
9 present my qualifications for the position of Chief Deputy
10 Director at the Department of Mental Health.

11 You have my resume, my statement of
12 qualifications, and goals, and several letters of support, so
13 I'm going to be brief.

14 You have my -- a copy of my remarks before you.

15 I have proudly served the State of California
16 for more than 33 years, including 25 years successfully managing
17 many state department operations and programs. I've spent the
18 last 20 years at the senior management level, including 18 years
19 as Deputy Director for the Department of Social Services and the
20 Employment Development Department, and the Chief Financial
21 Officer at the Department of Transportation.

22 And yes, I know both Mr. Boyle and Mr. Sertich.
23 We all worked at the Department of Social Services together.

24 Among the letters that you have received in
25 support of my confirmation are ones from the former Director of
26 EDD and the former Chief Deputy Director of the Department of
27 Transportation.

28 In the next few years, the Department of Mental

1 Health will need to address many challenges. Among them we will
2 need to, one, develop the financial structure to manage and
3 effectively direct the funding we will receive through the
4 Mental Health Services Act, and improve the systems for managing
5 all other funding in the department.

6 Two, engage the broad range of mental health
7 service stakeholders, from consumers and family members to
8 counties and other providers of mental health services in
9 setting priorities for service delivery.

10 Three, transform the mental health system in the
11 community and in the state hospitals to a recovery model that
12 will enable severely mentally ill people to live independently
13 in the community and avoid institutionalization.

14 I have managed programs in some of the largest
15 departments in the state for the last 20 years, and I am well
16 prepared to address these three challenges.

17 First, I have directed the financial operations
18 in three major large departments. I prepared -- excuse me -- I
19 am prepared and ready to work with the Director at the
20 Department of Mental Health, Dr. Stephen Mayberg, and mental
21 health stakeholders to direct the effective and fiscally prudent
22 implementation of Proposition 63, the Mental Health Services
23 Act.

24 Second, as Deputy Director of Operations at EDD,
25 I was responsible for the development and implementation of the
26 strategic plan for the Unemployment Insurance Program. I
27 conducted a series of town hall meetings throughout the state
28 for staff and stakeholders prior to implementation of the plan,

1 and I conducted follow-up meetings during and after
2 implementation to keep staff and stakeholders up to date on our
3 implementation efforts. In preparation for implementation of
4 the Mental Health Services Act, we have developed a very
5 inclusive process with extensive stakeholder participation.

6 Third, the strategic plan at EDD involved a major
7 transformation of the service delivery system. We transformed
8 the Unemployment Insurance Program from an in-person system that
9 often required clients to travel significant distances to a
10 technology-based system that made services readily available by
11 telephone and internet, while still providing for face-to-face
12 access when needed. We improved access to services and
13 significantly reduced costs for the department and for clients
14 we served.

15 I'm prepared to use my experiences at EDD to help
16 create a similar transformation for our mental health services
17 delivery system.

18 Finally, I believe it's not just what we do but
19 how we do it that's important. I'm a collaborative leader and
20 manager. Throughout my career at every level of management I
21 have worked with other executive level managers to make policy
22 decisions and set program goals.

23 I believe my strengths are my ability to gain the
24 confidence of others, provide support for the organizations,
25 managers, and their staff in order for them to achieve the
26 desired outcomes, and to hold managers accountable.

27 I believe my experience makes me well suited to
28 be the Chief Deputy Director at the Department of Mental Health.

1 I would welcome and appreciate the opportunity to continue to
2 serve the people of California in this capacity.

3 Thank you for allowing me to address you this
4 afternoon and answer any questions you may have.

5 CHAIRMAN PERATA: Thank you.

6 Senator Bowen, questions? Senator Battin?

7 I have a couple.

8 SENATOR BATTIN: Move the nomination.

9 CHAIRMAN PERATA: First of all, I just want to
10 note for the record that you want to work on the implementation
11 of Prop. 63, but the Governor has yet to make his appointments.
12 I want mention that to him. It makes it much harder for you to
13 do your job if those people aren't there.

14 I would hope that you would keep -- I don't know
15 how, well, I didn't read it; I just voted for it -- how the law
16 applies in terms of its reporting out. But it is obviously of
17 high concern to the people of the state and I think most of us
18 here.

19 Your department, I believe, reported to the
20 Senate Budget Committee that the report on expanding federal
21 Medicaid funds would not be available until next spring. It was
22 funded in this fiscal year, so I would just hope you'll make a
23 little mental note of that and kick that up.

24 MR. GARCIA: I will, Senator. In fact, just a
25 comment on the federal -- the report on federal funding.

26 We did have difficulty in filling the positions
27 that were provided for the department this year. And as we
28 began to do the work on looking at some of the potential

1 additional funding from the federal level, we found that it's
2 very complex. There's going to be substantial additional work
3 that's going to be required to really nail down what some of the
4 requirements are. So, there weren't any real quick fixes that
5 could have been taken advantage in the coming budget year.

6 But we do intend to work on it very hard in the
7 next few months, report to the Legislature so that in the coming
8 budget cycle it can be addressed.

9 CHAIRMAN PERATA: A Republican administration in
10 Washington is making things complicated? Sounds like
11 bureaucracy to me. Thanks for your honesty.

12 Do you have family here?

13 MR. GARCIA: No, I don't. I did not bring family
14 kind of in the interest of time. I do have a family. My wife
15 of 33 years, Joanne Yee. And I have two daughters, both college
16 graduates. One living here in Sacramento; one living in
17 Nashville.

18 CHAIRMAN PERATA: Thank you.

19 SENATOR BOWEN: I do have one question.

20 If we train more people with bachelors degrees in
21 chemistry, will we get better mental health care in California?

22 MR. GARCIA: You know, it's interesting. And I
23 told my kids --

24 SENATOR BOWEN: I just noted that and I find it
25 interesting.

26 MR. GARCIA: As my kids were going through
27 college, I told them, "It's really not so important what you
28 major in. It's what you do after you graduate."

1 I think many people don't do things in the field
2 that they major in in college. Chemistry was something that I
3 really enjoyed when I was going to college.

4 SENATOR BOWEN: That in and of itself says
5 something about you.

6 [Laughter.]

7 MR. GARCIA: I haven't touched it in many years.

8 CHAIRMAN PERATA: I'll tell you what struck me is
9 that your last posting was Director of Finance for the
10 Department of Transportation. Now you're in mental health.

11 Is there any correlation?

12 [Laughter.]

13 MR. GARCIA: As I was making the transition, I
14 did hear some of those kinds of comments.

15 No, there's really no connection. I enjoyed
16 working at Transportation. I just thought this was an
17 opportunity where I could do more.

18 CHAIRMAN PERATA: You could be in our business.
19 You're very politic in your remarks.

20 Anybody here in support of the nominee? Anyone
21 in opposition?

22 Seeing none, we have a motion to approve. Please
23 call the roll.

24 SECRETARY WEBB: Bowen.

25 SENATOR BOWEN: Aye.

26 SECRETARY WEBB: Bowen Aye. Cedillo.

27 SENATOR CEDILLO: Aye.

28 SECRETARY WEBB: Cedillo Aye. Battin.

1 SENATOR BATTIN: Aye.

2 SECRETARY WEBB: Battin Aye. Perata.

3 CHAIRMAN PERATA: Aye.

4 SECRETARY WEBB: Perata Aye. Four to Zero.

5 CHAIRMAN PERATA: Congratulations.

6 MR. GARCIA: Thank you.

7 [Thereupon this portion of the

8 Senate Rules Committee hearing

9 was terminated at approximately

10 2:50 P.M.]

11 --ooOoo--

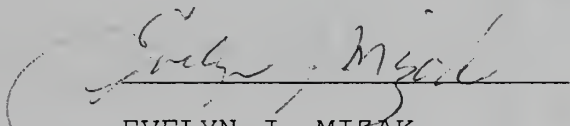
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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AECOM

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President

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January 10, 2005

Don Perata
Chairman
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Perata:

The State of California, in order to maintain its economic leadership position in the world, must reinforce its commitment to all levels of education within the State. This must be done individually by each educational entity, and the State as a driving force to maximize all students' access to and coordination amongst the public educational systems within the state. The California State University (CSU) system is a critical link in making the California educational dream a reality.

In your letter of December 22, 2004, you requested brief answers to the following questions;

Question #1: Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California State University Board of Trustees?

Response: The quality of both the education and the experiences our students derive out of attending CSU is paramount. There are numerous ways of measuring this from national rankings, graduation rates, surveys of students, faculty, and employees by campus, etc. CSU must lead the way in providing the best quality education which means that working with and integrating the high schools, community colleges and future employers into a comprehensive systematic program. CSU is a major economic engine of this States' economy and with the projected increase in population, a seamless system must be the long-term goal to efficiently and effectively educate our population.

Question #2: CSU plays an important role in preparing a skilled state workforce. Two critical areas of need are teacher preparation and nursing education where workforce shortages have been critical for years. What is CSU doing to address these workforce preparation needs? How are you monitoring the success of these and other efforts to meet the skill and knowledge requirements of the California labor market?

Response: Preparing quality graduates, as stated in #1, is the key mission of CSU. CSU has in place now a teacher evaluation and feedback program for all new teachers from the CSU system. This program must be continued and further developed to share "lessons learned" amongst campuses so that CSU is routinely tailoring the needs of the schools with their curriculum. The same program could be instituted for the nursing profession initially with the major hospitals in specific locations. In addition, working with the high schools and community college counselors on workforce opportunities will be critical in assisting these students to "real" professions which match their interests. The graduation numbers and rates are provided for the CSU system and goals are monitored and reported.

Each campus has individual partnerships with various businesses in their local areas. Some businesses offer internships and advice as part of being on the advisory boards of individual campuses. In looking at the future of the California workforce, composite advisory boards for particular disciplines (engineering, teaching, etc.) can be established to provide guidance as to the needs of the labor market so that immediate recommendations and adjustments can be made system wide to ensure proper academic preparation for the ever changing workplace.

Question #3: As part of the 2004-05 Budget process, CSU negotiated an agreement with the Governor on a funding compact that envisions student fees rising on an annual basis. What do you believe should be the key features of a student fee policy for CSU students? How should the CSU Board of Trustees balance a university fee policy that provides students and families with costs predictability from year to year, and provide the university with a stable stream of resources?

Response: Preserving access for Californians is critical to the success of the California dream and providing an enhanced life for our growing population. Balancing access, quality, fee policy and opportunity in economic hard times is the greatest challenge CSU faces. Many factors can optimize the scarce dollars that all contribute to the cost of education. Some intangibles, but big impact items are reductions in remedial education; community college transfer integration programs; Early Assessment Program (EPA); systematic development and graduation rate improvement. Other potential value added avenues should emulate the private University systems where fundraising, capital campaigns, business association sponsorships and federal grants should be actively encouraged. By doing so CSU can optimize the entire financial/academic approach for quality education.

Question #4: Are there financially needy CSU students who are eligible for state grant aid but do not receive Cal Grant or a state university grant? If so, what financial aid policies should the Board of Trustees pursue to increase the number of financially needy CSU students who receive some form of financial assistance? What have been the effects of state reductions in CSU institutional financial aid in light of recent student fee increases?

Response: In a period of economic downturns for the State of California, the effect of rising costs will pose hardships on those families with limited disposable income. Question three (3) provides various ways to optimize the academic program as well as the financial resources available now to CSU. As such, the Cal Grant Program, Federal Funding, State University Grant Program and a business association program aimed at the financially needy must all be pursued. Internships can be immensely valuable in easing the financial burden and accelerating a smooth transition into the workplace. This will become an ever increasing challenge as the number of college age students increases and the number of adults wanting to improve their own educational background increases with the growing State's population. CSU must explore ways to utilize faculty, facilities, and local "teacher" aides such as the internet, volunteers, senior organizations, businesses, etc. to help fill the gap. Conventional approaches will no longer solve today's issues.

Question #5: More than half of all incoming CSU freshman require English and/or math remediation during their first year at the university. What overall strategies and policies should the State pursue to improve the academic preparation of students entering the university? What should CSU's role be in these strategies?

Response: The State of California should have a totally integrated program from elementary through the University system for education. CSU has two initiatives that will assist the state in integrating various programs. The first was implemented last spring and is the Early Assessment Program (EAP) which tests the college-bound juniors in English and Mathematics so they can better prepare themselves in their senior year. This step can be augmented with an out-reach program, by campus, for those schools that need the most assistance. CSU can also evaluate the level of teaching improvement that is needed and focus resources in this element. On-line applications can be made available to high school students as well as mentoring from CSU to the high schools. Another initiative must be the close course coordination between the Community College system and CSU. By building a "ladder" between the high schools, community colleges and CSU the State of California will minimize its expenditures and maximize the opportunities for all its students.

I am looking forward to discussing these and any other topics you would care to discuss.

Regards,



Raymond W. Holdsworth

DEPARTMENT OF SOCIAL SERVICES



May 2, 2005

The Honorable Don Perata, Chair
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

SUBJECT: CONFIRMATION HEARING OF MAY 18, 2005

Thank you for your consideration of my appointment to serve as Director of the California Department of Social Services, and for the opportunity to provide responses to the questions from your letter of April 15, 2005. My responses are attached. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

The Senate Rules Committee and the State Legislature can be assured that I will work diligently to achieve the mission of the Department of Social Services. The mission is stated "to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence." I look at the mission as helping make strong families so we have a stronger California and a stronger America.

I welcome further discussion with you and your colleagues at the May 18th hearing to consider my nomination to serve as Director of the California Department of Social Services. If I can provide additional information prior to my hearing, please contact me at (916) 657-2598.

Sincerely,

A handwritten signature in cursive script that reads 'Dennis J. Boyle'.

DENNIS J. BOYLE
Director

Attachment

Questions and Responses

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Director of the Department?*

My goals for the Department are built on the strength of my key achievements during my time in Riverside County. I implemented a welfare reform program that gained international acclaim and placed well over 100,000 welfare participants into real jobs. I reformed a child welfare system that was in disarray and built a community-wide system of child protection that was widely supported. The protection of vulnerable seniors from financial abuse was an important issue for me. I was a finalist in the prestigious 2004 Innovations in American Government competition for a program designed to help seniors avoid financial abuse.

Therefore, my key goals are:

- a) Our children need to be as safe as possible. My top priority is the safety of children.
 - i) I intend to embrace the letter and the spirit of AB 636, passed in 2001, to implement fully this system that measures counties' progress towards improved outcome and continuous quality improvement.
 - ii) I will evaluate a standardized safety assessment system, already implemented in at least 11 pilot counties, by the end of FY 2005/2006 and initiate statewide implementation to be complete by June 2008.
 - iii) I have a specific goal of working with our local partners to ensure the continued safety of foster children, including that required visits are made, generally at least once a month.
- b) Welfare Reform is an unparalleled success in the history of social legislation. The decrease in dependency on government, the increase in self-sufficiency in a population that society used to marginalize, and the dramatic decrease in the percentage of children living below the poverty line far exceeded the hopes of the pioneer reformers. But the job is not yet done.
 - i) I intend to focus the energy of a new generation of County Welfare Directors on the principles of self-sufficiency through employment. We learned a lot about what works and my goal is to see those approaches made available to all. My objective is to increase the number of CalWORKs participants that find employment in FY 2005/2006 by 5 percent over FY 2004/2005 and to increase the

participation rate in the state program by the largest percentage that we can.

- ii) Welfare Reform has not worked for everyone. The bipartisan agreement that implemented welfare reform wisely provided a safety net to ensure that families who could not become self-sufficient would be protected. A growing number of families are being served by the safety net. I intend to initiate a review to understand what additional things need to be done to help make these families self-sufficient members of society. My objective is to prepare a proposal to ensure as many families are fully engaged as possible for consideration/introduction after the review is complete.
 - c) Nationwide the number of seniors over age 85 will triple in the next two decades. Seniors are particularly vulnerable to financial abuse. I will work with the County Welfare Director's Association (CWDA) to develop proposals for the protection of seniors from financial abuse.
 - d) I intend to continue and make better the collaborative policy-making process between my Department and partner state departments, county welfare departments, local elected officials, and advocates. To the extent feasible, state action will be preceded by consultation with California State Association of Counties (CSAC), CWDA, and the advocates to be sure that the best-balanced course of action is chosen. I want to lead the Department staff towards an inclusive approach that engages our partners in policy discussions.
2. *You previously worked in the DSS and then went to Riverside County to be the county welfare director. How does your experience as a county welfare director inform your policies and priorities for the Department? What did you learn about policy development and program implementation as a county welfare director, and what changes at the state level do you expect to make as a result of that experience?*

I learned a great deal about leadership when I was at the local level. I learned how to create a vision for a large organization and how to make sure that each member of the organization understood his or her role in carrying out that vision. I learned how to set expectations and track results. I learned the value of research in program operation. I learned how to partner with organizations that were very different than my own to work together to reach a common goal.

I cannot list all of the different ways my county experience will help in leading this Department because there are so many. My experience in managing large production operations such as cash benefit issuance and overpayment recovery will help as I direct the Department. My experience in leading a staff that put well over 100,000 welfare recipients into real jobs taught me that if you believe in people, they will not disappoint you. My practical experience in working with the people who

benefit from our programs will be invaluable throughout a bureaucracy where few people have talked to foster children, seen a never employed single mother get her first job, ever had the experience of stuffing forty thousand checks into envelopes to get important benefits out in time for families to pay their bills, and a hundred other experiences. All these things inform my decisions. More than anything else, this experience allows me to put what we do at the state level into perspective. It will help me recognize when a problem seems big but is really of no consequence and recognize potential serious consequences from a seemingly minor thing we do in Sacramento. It also taught me that things go wrong in even the most carefully planned situation and to be prepared to deal with it.

Clearly, I learned that state decisions affect local capacity. Having worked in leadership positions at the local level for twelve years to implement state policy, I know that an important role of the state is ensuring that its decisions can be operationalized at the local level. I understand how to design programs and issue instructions to the counties that make sense at the line level.

I understand the operational, political, and financial impact of program change in a county. I see how a decision in one program impacts another. I experienced how a change in a CalWORKs case can impact the reunification plan for the same family in a Child Welfare Services case. I experienced the impact a computer change in my Department had on a computer system in the courts. I experienced the unintended impact of efficiency in CalWORKs reducing the resources available to Adult Protective Services.

In answer to your last question, I intend to bring to the Department as a result of my local experience a change in thinking from the theoretical to the practical.

3. *What do you view as the primary role and responsibility of the state in administering social services programs? Of the counties? How do you ensure a positive working relationship and communication with the counties so that the experiences of the counties are incorporated into policy and budget changes and that counties receive clear and consistent direction from the state?*

The primary role of the state is to set the standards, provide encouragement to the counties as they implement the standards, monitor the outcomes in the counties, and work with counties to implement corrections when the outcomes are outside expectations. The counties' role is to run the programs and obtain the desired outcomes. Counties need to be included in the standard-setting process because their practical experience is invaluable. You ensure a positive working partnership with the counties by valuing the relationship and constantly working on it. Counties should have input in what happens to them; they are much closer to the people, so have valuable policy advice to give. The state should set reasonable expectations, not surprise counties, and remove the barriers to success. You must always tell the truth. When things go wrong in the relationship, you need to be prepared to take quick responsibility without being defensive.

There is no secret to the state/county relationship.

4. *Legislation was enacted [SB 1104 (Committee on Budget and Fiscal Review) Chapter 229, Statutes of 2004] to require new In-Home Supportive Services (IHSS) Quality Assurance (QA) Initiative. What is the status of the development of that initiative and what do you believe are the primary goals to be achieved by that initiative?*

The IHSS QA initiative is intended to standardize the quality of needs assessments in each county in the state and thereby improve the quality of the program and increase the level of program integrity. We expect these actions to ensure all recipients receive accurate assessments and appropriate services, and we believe they will reduce state expenditures. The primary objectives are to provide statewide training to all IHSS social workers throughout the state, perform close monitoring of case decisions at the state and local level, and take such other actions as are necessary to accomplish this purpose.

Since September 2004, we have hired 18 state level staff (including four county experts), provided counties funding to support hiring 110 QA staff and 110 IHSS social workers. Counties hired, or are in the process of hiring, QA staff in over two-thirds of the counties; the remaining counties are now beginning the process. We identified the computer systems changes needed to support QA activities, established six stakeholder workgroups and held several meetings with each group, convened three general stakeholder meetings, and made significant progress toward developing emergency regulations called for by SB 1104 to permit implementation. The training will be conducted in two phases. Phase I will begin on July 1, with training for all IHSS social workers in the state over the next year focusing on the current requirements and standards per our IHSS regulations. Phase II will focus on new requirements and standards being developed with the involvement of counties, Public Authority staff, union leaders, advocates, members of other state departments, legislative staff and consumers in our workgroups. I'm confident that we are implementing SB 1104 within the timeframes, and with the spirit envisioned by the Legislature and the Governor when this Trailer Bill Language was developed and signed into law last year.

5. *The governor's budget has proposed a number of changes to the CalWORKs program, including grant reductions and reductions in funds for employment services. In the years since the CalWORKs program became operational, California's caseload has been reduced from over 700,000 to less than 450,000 cases. In most years, the state's General Fund commitment to the program has been at, or only slightly above, the minimum amount of funding necessary to meet the federal maintenance of effort (MOE) requirement. In addition, the state has saved over \$1 billion in General Fund from utilizing existing program costs that count toward the MOE.*

Do you believe that the persons now left on the program, on average, have more obstacles to employment than did the average person on the caseload when CalWORKs began? What do you believe is the appropriate balance between providing basic grants, necessary employment, mental health, substance abuse treatment, domestic violence prevention and other services to persons who remain on CalWORKs—with Temporary Assistance for Needy Family (TANF) funds and state MOE funds—versus using those funds to support other programs outside of CalWORKs? Can CalWORKs be successful with a level of reduced care funding?

I do not believe that the individuals on aid now, on average, have more obstacles or barriers to employment than those who were on aid when CalWORKs began because our workers still help large numbers of participants into jobs and education. In Riverside County last year, we averaged over 900 job entries per month. Some parts of the caseload, of course, do have significant barriers that must be overcome and some have barriers to self-sufficiency, if not employment. For example, in my experience many of the families reaching the five-year time limit have fully employed adults; they just do not make enough to support a sometimes large family. We see an increasing number of families in long-term sanction status as well. I believe we need to better evaluate why these families are not participating, and develop strategies to re-engage them. "On average," the people who participate in CalWORKs do not have more barriers, but there is a growing number that do.

Since the federal welfare reform in 1996, the Department has worked to increase the proportion of funds to provide work supports for the CalWORKs families. In 1995/96, 83 percent of funds were used for assistance, seven percent for services and 10 percent for administration. By 2003/04 the percentage shifted to 61 percent in assistance costs, 30 percent for services and nine percent for administrative costs. This balance seems about right. It shows that we have reduced our need to give cash assistance and are investing more in providing families with the employment and supportive services they need, including substance abuse mental health services, to obtain self-sufficiency.

Can CalWORKs be successful if part of the block grant is used for costs other than core CalWORKs items? Sure. There are many parts of our system that provide necessary, if indirect, support to the program. For example, we use part of the block grant for foster care services and for the child care needs of families who have left the program and need this support to stay off aid. In doing so, we are meeting the needs of needy families while saving State General Fund and avoiding other program cuts. How much is too much? It depends on too many variables to do anything more than speculate. I am confident that the current proposed budget is adequate and will provide for a successful CalWORKs program.

6. *Federal fiscal penalties may be assessed due to California's performance in child welfare services under the federally required program improvement plan. What is your opinion on passing all or some of these penalties, if they occur, to the county level of government? How would passing these*

penalties on to the counties affect the Department's relationship with the counties and the outcomes of the collaborative child welfare reforms that are currently in progress?

Also, what steps do you plan to take to reduce the number of children who are kept in foster care for many years, rather than being moved to a permanent placement?

I am committed to working diligently to avoid penalties and will contest vigorously any penalties that may be attempted by the federal government. The basis for contesting penalties may include:

- a) the validity of the original design of the Federal Child and Family Services Reviews, including the use of a 50 case sample size for every state, regardless of the size of the state;
- b) the validity of the methodology used to set the targets; and
- c) the fact that California will be able to report substantial progress towards its targets. I admire the federal accomplishment in focusing the states on improving child welfare through this initiative, but I do not believe the current federal system and outcomes are defensible on their merit.

I would not be surprised to see the federal government attempt to impose a sanction on us for non-compliance with the current measures or some part of the Program Improvement Plan (PIP), but I expect to be successful in a sanction defense. County cooperation in defeating an attempted sanction would be important and I want the counties focused on helping us, rather than reserving energy for their own sanction defense. I do not see where any county inaction to date would make us more likely to sustain a deserved penalty from the federal government in the PIP or the federal performance measures. Our counties have done a remarkable job of responding to the federal and state direction for change in the Child Welfare programs. That is not to say that future expectations of the federal government tied to sanctions will have the same flaws and that a pass-on of a sanction to a non-performing county would not be appropriate. Currently, as Director, I do not have any authority to require the counties to share in federal penalties under any circumstances. The state must absorb the total cost regardless of the circumstances leading to the penalty. There may be circumstances under which a county should share in the cost of a penalty and the state should have the authority to pass it on, and our county partners should share in and be accountable for the responsibility of program integrity and success.

I recognize the counties have concerns with the proposal to authorize the discretionary pass-on of federal sanctions and I am very willing to discuss it further with them. Perhaps the language needs further clarification. I certainly do not want to jeopardize the collaborative relationship that the state and counties have developed nor adversely affect our mutual focus on improving outcomes for children and families.

In response to your second question regarding reducing the number of children in foster care for long periods of time, the Department is currently working on three child welfare services improvements in 11 pilot counties, one of which targets permanency. One initiative, called Family Conferencing, uses facilitators to involve the immediate and extended family members to develop a comprehensive plan to care for the children. This is a significant practice change for our social workers and an important one from my vantage.

The Department has also supported the implementation of concurrent planning by our county child welfare services and I intend to continue this support. Concurrent planning means that when a child is removed from their family and placed in foster care, the child welfare agency works diligently on a family reunification plan and simultaneously develops an alternative permanency plan, should reunification fail. This could be placement with a relative or non-relative with a plan for guardianship or adoption. Planning a permanency alternative for a child when he or she first enters foster care provides a permanent home much quicker than the traditional approach if reunification fails. I personally saw improved outcomes for permanency during my tenure in Riverside County from this policy and from the implementation of Family Conferencing.

7. *California is not enrolling in the Food Stamp Program all those that are eligible. How would you propose to increase the number of persons enrolled in Food Stamps while at the same time continuing to avoid federal penalties for error rates?*

It's important to recognize that, although the Department of Agriculture calculates a Food Stamp Program participation rate for California that is below the national average – 49 percent versus 54 percent for FFY 2002 – our actual participation rate is much higher. The Department has reviewed the methodology that USDA employs to develop the state participation rates and we learned that it does not correctly consider California's 1,000,000 Supplementary Security Income (SSI) recipients who automatically receive cash in lieu of Food Stamp benefits. UC Berkeley calculates California's participation rate for 2002 well above 70 percent after correcting for this and other errors in methodology.

However, I do believe that the Food Stamp Program is an important support to the working poor and we should do everything we can to make it available to all who are eligible. The Department and the counties implemented a number of changes that led to a caseload increase of over 30 percent over the past five years. Nearly 200,000 more households receive Food Stamps now than five years ago, evidence of an aggressive outreach program.

The Department works with a variety of stakeholders to improve program access and develop outreach strategies to increase the number of eligible families accessing Food Stamp Program benefits and address barriers to program participation. These efforts include:

- a) Encouraging counties to perform Food Stamp outreach activities. For example, 38 counties (representing 90 percent of statewide Food Stamp households) have eligibility workers out-stationed at locations other than county welfare department offices.
- b) Working on several new collaboration efforts, including one with H & R Block, to incorporate Food Stamp promotion as part of their tax services and with the Internal Revenue Service to provide Food Stamp outreach in combination with promotion of the Earned Income Tax Credit.
- c) Working with the Department of Health Services Nutrition Network, to develop the Food Bank Outreach Project in ten participating counties, where food bank staff conducts aggressive Food Stamp Program outreach activities.

It is important to balance our Food Stamp outreach activities with a firm commitment to maintaining payment accuracy in the Food Stamp Program. The Department, along with the counties, is committed to reduce error rates and keep them low. Expanded Department oversight and county accountability will continue to be important priorities.

8. *SB 2030 (Costa), Chapter 785, Statutes of 1998, required that the Department commission a caseload ratio study for child welfare services, i.e., the number of children on a worker's caseload. That study found that caseloads were much higher than they should be; in many categories, more than twice as high. The reduced caseloads have been only partially implemented. Do you believe that current caseloads are too high? How can the Legislature be assured that the caseload of child welfare workers is appropriate to protect the safety of children?*

It's important that the Administration and Legislature be mindful of the findings of the SB 2030 study and continue to narrow the gap when the opportunity presents itself. During the past several years, we have held social worker allocations steady even in counties that have experienced caseload reductions, and through special child welfare services augmentations we have increased funding for social workers, even in lean budget years. We are pleased that the Legislative Analyst's Office agrees that the gap is closing. We intend to develop tools this year to track this type of information and we intend to report to the Legislature during each year's budget process. Although we have made progress, we must keep in mind that SB 2030 identified a big gap between what we had and what we needed. Progress is good, but we are not there yet.

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



May 2, 2005

The Honorable Don Perata, Chair
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

SUBJECT: CONFIRMATION HEARING OF MAY 18, 2005

Thank you for your consideration of my appointment to serve as Chief Deputy Director of the California Department of Social Services and for the opportunity to provide responses to the following questions from your letter dated April 15, 2005. My responses are attached. I welcome further discussion with the Senate Rules Committee during the hearing to consider my nomination to serve as Chief Deputy Director of the Department of Social Services.

I hope to have the opportunity to work with the Legislature on the important issues facing California's families. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

Thank you for the opportunity to provide additional information on important issues facing the department. Please contact me at (916) 657-2598 if I can provide additional information in advance of the hearing.

Sincerely,

ROBERT T. SERTICH
Chief Deputy Director

Attachment

QUESTIONS and RESPONSES

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Chief Deputy Director of the Department?*

During the first eight months in which I have served as Chief Deputy Director, I have made management decisions and provided advice to the Director on other issues using the following goals:

- a) *The Department should always keep the safety of children and vulnerable adults as paramount.* The Department oversees the county-delivered programs that respond to emergency and crisis situations for these populations. The Department operates the Community Care Licensing Program in partnership with counties and attempts to provide safeguards and assurances that avoid these crises. These programs alone cannot ensure the safety of these vulnerable populations. The education of, and partnerships with, local law enforcement agencies, non-profit providers of services, schools and the public at large must be achieved in order to provide true protection for these groups.
- b) *The Department's programs should prepare people for self-sufficiency.* Self-sufficiency is the means by which families provide themselves the opportunity to avoid living in poverty and to live as independently as possible. Departmental programs provide income support, provide services to address barriers to work, provide services to maintain the family as a unit, provide services to maintain people in their homes, and provide training directed toward work.
- c) *The Department should conduct its operations consistent with a principle of open government in the development of policy and program operations.* The involvement of other governmental agencies, interest groups, providers of service and recipients of service is important to departmental policies that will be effective and provide the public confidence that the Department is moving toward appropriate and responsible goals.

These are items that will be paramount in my thinking as I work with the Department's executive staff and advise the Director on the direction of programs and issues that face the Department in the future.

I have already established several priorities in the Department that will result in improvement in both the effectiveness and the efficiency of departmental operations. These priorities include:

- a) I want to apply modern technologies to support both the state and county staff in the delivery of program services. Currently, there are several major automation efforts being designed and implemented in conjunction with the counties: CalWORKs Information Network (CalWIN), Child Welfare Services Case

Management System (CWS/CMS), California Medical Information Payment System (CMIPS), and Electronic Benefits Transfer (EBT). In addition, the Department is working with the Social Security Administration to implement a paperless folder in the Disability Evaluation Program. Finally, staff is at work within the Department to improve the capacity of the Department's internet offerings and to deploy equipment and procedures to reduce the internal paperwork in its administrative services. All of these activities will result in improved efficiency and better operation of departmental activities and programs. Regardless of whether state or counties perform functions, better efficiency can be achieved.

- b) I see the need to rebuild the staffing and expertise in the Department that has been diminished through many years of budget reductions and hiring freezes and through large numbers of retirements in recent years. The Department has already initiated a new civil service examination for Licensing Program Analysts on a continuous basis to ensure that staffing resources are available statewide for this very important function. In addition, I have initiated workforce planning activities in the Department including a Workforce Advisory Team to advise Department management on both recruitment strategies and succession planning for the leadership team that will likely be depleted over the next three to five years due to retirements. I see it as an imperative to build a skilled workforce for the Department.
- c) I have focused significant time and energy on the implementation of the Independence Plus Personal Care Waiver and the Quality Assurance Program in the In-Home Supportive Services (IHSS) Program. This is a program whose services and funding have expanded dramatically over the past five years. The Independence Plus Waiver provides a significant inflow of Federal Title XIX Medicaid funding (over \$200 million) that eases, but does not eliminate, the budget pressures on this program. The IHSS Quality Assurance efforts will assure consistency and appropriateness of services to the IHSS recipients from county to county and provides better management of state and federal funds.
- d) Another priority I am focusing on is the implementation of AB 636, the System Improvement Plans in the Child Welfare Services (CWS) Program. AB 636 was passed in 2001 and provides a major program improvement in CWS by requiring the counties to focus on outcomes for the vulnerable population served by CWS. During this fiscal year, every county has been required to submit a report on the status of the county program with the input of stakeholders at the county level and the approval of the county board of supervisors. This report includes the measurement of county status against key outcome indicators and identification of plans to improve services in each county. The Department has been reviewing and approving these plans and posting them on the Department's internet site for public viewing. These reports provide a statewide benchmark for the outcomes and operations of the CWS programs. The counties are required

to provide an annual update and present new plans every three years. The Department will be monitoring and reporting on county outcomes.

2. *In the next few years, it is anticipated that a number of veteran management personnel in the state will reach retirement age. How will this affect DSS? What steps are you taking to minimize the impact on the operation of the many important programs in the DSS? How do you propose to attract and train replacement staff?*

The Department recognized workforce planning as a significant issue in 1998, when we began our workforce planning efforts specifically focusing on leadership development. Our workforce data in 2003 indicated that our staff was significantly older than the rest of state service combined: 31 percent of the statewide workforce was over 50 compared to 49 percent of this Department's staff.

A key to succession planning is the training and development of future leaders. The California Performance Review (Item SO 42-The Leadership Challenge) recognized the California Department of Social Services for its leadership development program, Professional Management Development Program, as "a best practice within state government that could be developed statewide." This program is being resurrected after a temporary deferral due to the 2003 budget reductions. It includes:

- a) Mid-Level Management Academy: 18 percent (9 of 50) graduates have promoted within the Department since attending.
- b) Leadership Forums for our top 100 ranking members with an emphasis on leadership learning and development.
- c) New Supervisor Development Program—Self Assessment and Preparation for entry level supervisory positions.

The Department is currently developing a workforce planning strategy by taking the following steps:

- a) Establishing a CDSS Workforce Advisory Team to advise management and the succession program manager as well as help develop our workforce plan.
- b) Maintaining the Department's institutional knowledge base by identifying and implementing strategies to keep key employees working beyond retirement age until future leaders can be trained.
- c) Administering numerous entry-level examinations on a "continuous basis," which provides for a ready supply of qualified candidates that is being constantly replenished.

- d) Working with California State University Sacramento, to develop a certificate program for Succession Planning aimed at government. This is consistent with CPR recommendations to partner with universities to leverage state development resources.

It should also be noted that the Department's Training & Development Managers are active in the leadership of statewide workforce development activities. The Department's Training & Development Managers initiated and organized the Health and Human Services Agency Trainers Group. These same managers also participated in the CPR Taskforce providing the Governor's Office with a recommendation for a Statewide Workforce Development Program. These efforts result in the sharing of information, best practices, and resources that will improve the delivery of training in the Department and the rest of state service.

- 3. *Last year, In-Home Supportive Services (IHSS) recipients' personal data was inadvertently obtained, from a social service researcher, by unauthorized persons. Most social service research is conducted using data collected by federal, state or local governments. What protocols does the Department have in place to protect against the unauthorized release of personal data? What additional safeguards would you support that would protect recipients, but allow authorized research to continue to be conducted?*

In September 2004, the Department was notified by the University of California at Berkeley and a visiting researcher that was using departmental IHSS personal data that there had been a breach of a data base that contained over one million names of IHSS providers and recipients. The Department immediately contacted the California Highway Patrol. We worked with the CHP to assure notification of affected individuals without compromising the criminal investigation. Upon receiving that assurance, the Department notified over 600 media outlets of the breach as is authorized under state law. The services of a professional Privacy Consultant (Ann Geyer of the Tunitas Group who has worked with state and private agencies on privacy protection) were engaged to assist with our response to the breach and also the development of policies and practices for data protection. The Department also worked with all key partners in the IHSS system including counties, public authorities and labor unions representing workers of the breach. A notification was put on the pay stub of current IHSS providers as well. The effort also included the establishment of a telephone center and detailed information on the Department's website to respond to questions about the breach and actions individuals could take to protect their identity and credit ratings. After the response to this notification was lower than expected, the Department mailed over one million letters to individuals identified on the data base in December 2004.

Under my leadership, the Department also took aggressive action to protect any other data that was being handled by other researchers and developed policies to assure proper handling in the future. Following the Department's notification of the

IHSS data security breach, all researchers using IHSS data were immediately advised to suspend use of those data until: a) the researchers had obtained authorization for their research through the Health and Human Services Agency Institutional Review Board; and b) they had entered into a contractual agreement with CDSS authorizing their use of the CDSS data for research purposes. Next, the Department worked with the Department of Finance's Information Security Officer; and the State Privacy Officer, in responding to the incident and to develop new policies to avoid similar breaches in the future. Following are highlights of the Department's new policies and procedures:

- a) All research projects using data identifying individuals must have the approval of the California Health and Human Services Committee on Human Subjects before any data is shared.
- b) All research projects must also have the approval of the participating institutions, university or research institution, or institutional review board.
- c) Data release agreements are required for all non-state entities including researchers and research organizations.
- d) All data containing individual identifiers will be encrypted before transmission to any researcher.
- e) Data sets containing more than one personal identifier will be separated into different files before transmission and can be re-aggregated only at the research site.
- f) No departmental data bases can be used on personal computers connected to the Internet while research is being done.
- g) A departmental Data Protection Committee has been established to oversee these policies and approve the release of departmental data. Two meetings of that committee have occurred to date.

These policies and procedures are now in place and all IHSS projects that were in progress at the time of the breach are in compliance with these policies. Under my direction, the problem was identified and remedied and new procedures and policies are in place to prevent future security breaches.

On June 3, the Department will be holding a conference at UC Davis to inform researchers of the new CDSS requirements for use of departmental data. We are aware of the importance of conducting research to evaluate and improve programs. However, the Department must place the highest priority on assuring that confidential information about our clients is not disclosed during the conduct of that research. This conference brings together key representatives of California research institutions, legislators, and research funders to inform them of the new

requirements for researchers using our data. We will discuss steps to assure that our practices meet the highest standards for safeguarding confidential data.

An important lesson learned has been that the state departments must be ever-vigilant to protect the data bases that contain private information of the individuals served and the business partners involved in those services. The breach in question occurred at a major research institution that was assumed to have necessary controls to avoid the privacy intrusions that resulted. The Department has learned that detailed requirements must be in place and that no agency or institution can be exempted from these rules. The expense in terms of individual concern and budget exposure is too great.

4. *In a pending lawsuit, the Department is currently defending the administration's decision to not provide a cost-of-living adjustment (COLA) for the CalWORKs program (in conjunction with the decision to reduce the vehicle license fee). In a recent budget hearing, you testified that the Department has not yet budgeted for either the attorney costs of that litigation (costs being borne in part by the attorney general's office) or the potential cost if the Department loses that lawsuit. Can you please provide an estimate of these costs, including but not limited to the cost to the Department's legal staff, the attorney general's office and the potential cost of the loss of that suit?*

Following are the estimated costs of the Guillen v. Schwarzenegger lawsuit. As you may know, attorney fees to opposing counsel are only incurred if the Department loses the appeal. The contingent amount of attorney fees through the trial stage has been settled, but any additional fees are a matter for future negotiations. These costs are not included below because they have not yet been determined and to provide an estimate would make public the Department's estimate prior to the resolution of the case. The cost of the legal staff from the Department is not charged or identified by court case, as it is part of their day to day functions. Also, the Department has a single budget item for all Attorney General's services and individual item costs are not detailed. Finally, I want to restate that we do not agree with the petitioners' position and we believe the state can prevail in this action.

Cost Item	Cost	Comment
ESTIMATED DSS COUNSEL TIME/COST	\$7500	
ATTORNEY GENERAL COUNSEL COSTS	\$70,000 billed through March 2005	
OPPOSING COUNSEL FEES & COSTS	\$184,225 Through trial stage only, per settlement agreement between parties.	To be paid only if petitioners win the case after all appeals.
RETROACTIVE PAYMENTS TO RECIPIENTS	\$228,000,000 increased grants October 2003 through June 2005	Ongoing Annual Cost of \$134,000,000 assuming no statutory changes

The Department has an estimate of the cost of the retroactive payments provided to recipients if the state should lose the case. The estimated current year impact (including retroactive payments to October 2003) is \$228 million with an ongoing annual value of approximately \$134 million.

5. *What is the status of the application for a new Title IV-E waiver, to be implemented in Los Angeles, which will allow additional flexibility in child welfare services? What is the Department doing to assist in the development of that waiver?*

The Department has worked diligently to obtain approval from the federal Department of Health and Human Services (DHHS) of the Title IV-E waiver. The waiver proposal was sent to DHHS in May 2004. Department staff has responded as quickly as possible to numerous questions from DHHS and has worked closely with our workgroup composed of representatives from interested counties convened by the County Welfare Directors Association (CWDA).

In a trip to Washington, D.C. in March 2005, the Department's Director, Dennis Boyle, had discussions with federal DHHS officials regarding California's waiver request. He emphasized the importance of the request to California. DHHS officials indicated that a prompt review of the request would occur.

DHHS has informed the Department that the waiver proposal was recently forwarded by DHHS to the federal Office of Management and Budget (OMB) for

Robert T. Sertich, Chief Deputy Director
Department of Social Services

Confirmation Hearing Date: May 18, 2005

review and approval of the concept. It is expected that OMB will respond by the end of May with any concerns or requests for additional information on the waiver. If our concept is approved by OMB, the Department and DHHS will begin to negotiate the specific terms and conditions of the waiver.

According to DHHS, our waiver proposal is possibly the largest and most complex proposal submitted by any state. We remain committed to working hard to reach a final agreement with DHHS that will provide the flexibility California needs to fund services that will improve outcomes for children and families.

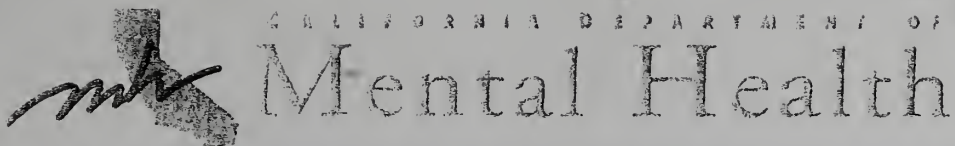
The new waiver proposal provides more flexibility in a number of ways. There will be a requirement for an evaluation but there will be no requirement that there be an experimental design, as the prior waiver required. As a result, there will be no control group of children with similar needs who will not be served. There will be no restrictions on the number of children and families that could be served in participating counties. However, should a county exceed its waiver allocation, county-only funds would need to be expended. The Department will require a plan from the participating county explaining the population to be served, the service options to be utilized, etc. These plans will be reviewed and approved prior to implementation. The Department plans to use AB 636 measurements as one way of monitoring the counties' progress towards serving children safely in their own homes or in community-based levels of care.

6. *At a recent budget hearing, you testified that the Governor's proposed reduction of \$50 million in CalWORKs employment services would reduce the state's federal work participation rate (WPR) by only a few percentage points. However, what would be the impact of this \$50 million reduction on California's WPR if increases in the federal WPR are enacted as described in each of the pending U.S. House or Senate Temporary Assistance for Needy Families (TANF) reauthorization bills?*

First, I would like to clarify that, at the previous hearing, I testified regarding the impact of the reduction on the work participation rates due to the grant reductions and the earned income disregard changes that are proposed in the Governor's Budget – not the reduction in employment services funding. In addition, at that hearing, I testified that counties did not fully expend their Single Allocation last year or the year before that, so we do not anticipate that the loss of the one-time \$50 million augmentation would impact the ability of the counties to provide employment services. Given the very difficult reductions we had to propose in wage levels to IHSS providers and grant levels to CalWORKs recipients and a grant freeze for SSI/SSP recipients, this reduction in the single allocation where prior expenditures did not support the increased level seemed very appropriate. Additionally, the \$50 million was a one-time legislative augmentation included as part of the budget compromise. At the time, data did not support the original county request of \$100 million, and current data does not support continuing the final lower amount.

Let me clarify where we believe things stand on the federal reauthorization of TANF. Both the House and the Senate versions of TANF reauthorization propose to increase the work participation rate (from 50 percent to 70 percent) over the life of the reauthorized TANF Block Grant. We estimate that, based on current participation levels, the state would not meet the work participation rate under the House proposal after the first and most likely the second year of the TANF Block Grant absent programmatic changes. Under the Senate version, we estimate that California would not meet the work participation rate in the second or third year of the reauthorized Block Grant. It's important to note that most other states will be impacted in the same way. Because of this challenge, we will be working with the Governor's Washington D.C. office to get the best reauthorization bill that will continue California's successful implementation and the best opportunity to avoid financial penalties in this area. In addition, there are efforts underway to assess the possibility of creating a separate state-only program for those families who are exempt from welfare-to-work participation, which will greatly increase California's work participation rate and further shelter us from potential federal penalties under TANF reauthorization proposals.

In an effort to position ourselves for the upcoming requirements of TANF reauthorization, the Administration put forward and the Legislature supported changes to CalWORKs to strengthen the work focus of the program, via SB 1104 (Chapter 229, Statutes of 2004). The Department has recently implemented these reforms to the CalWORKs welfare-to-work program and, once fully implemented, we anticipate that our work participation rate will improve by approximately 10 percent.



1600 9th Street, Sacramento, CA 95814
(916) 654-2309

May 6, 2005

The Honorable Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol Building, Room 420
Sacramento, California 95814-4900

Dear Senator Perata:

I am honored to present you and the other members of the Senate Rules Committee with this statement of my short and long term goals as the Chief Deputy Director for the Department of Mental Health. The goals that I have outlined for you are consistent with the mission of the Department:

We will work in partnership with our stakeholders to provide leadership of the California mental health system to ensure the availability and accessibility of effective, efficient, and culturally competent services. We will accomplish this through advocacy, education, innovation, outreach, understanding, oversight, monitoring, quality improvement, and the provision of direct services.

I have proudly served for more than 33 years in California state service including more than 25 years in management and senior management positions. My approach to the job reflects my core values and has been consistent throughout my career: work hard, treat everyone with respect and dignity, maintain loyalty to my employer, take responsibility for my actions, be trustworthy, and always act with integrity. I grew up in a large family in a very small town in Texas. My family would have been considered poor by most standards, but as a child, I never noticed. I had the kind of freedom and daily interaction with a large extended family that my own children would envy. My parents impressed upon me the importance of hard work, honesty, and compassion; the value of education; and commitment to family. Although our means were very modest, my parents – and especially my mother – were known for their generosity towards those who had even less. My family worked together as migrant farm workers every summer, always returning home at the end of the summer so that my siblings and I would not miss a day of school. My parents had only a high school education but they knew the value of education.

I am grateful for the opportunities I have had. I believe I live a rich life. My life experiences are the driving forces behind my commitment to help make life better for those less fortunate than I. I am extremely honored to be considered for the position of Chief Deputy Director, to allow me to continue to use my experience and skills in service to the vision and mission of the Department of Mental Health and the people of California. In my short time at the Department of Mental Health I have been inspired by the dedication and devotion of department staff to serve clients who are severely mentally ill or seriously emotionally disturbed. I look forward to the opportunity to continue working with these dedicated staff to improve the array of services and accessibility to services in order to reduce institutionalization and help more severely mentally ill clients achieve independent living in the community.

There are a number of important goals that I want to accomplish as Chief Deputy Director, and during the last few months I have already taken steps to achieve some of them. The goals are described below.

I. Implement the Mental Health Services Act.

In November 2004, the voters of California passed Proposition 63, the Mental Health Services Act (MHSA). We estimate that the MHSA will provide approximately \$700 million per year for the next three years and continue providing funds into the future. This represents about a 15 percent increase in funding for community-based mental health services including prevention and early intervention. The funding provided by the MHSA gives California the opportunity to transform the State's mental health system. In implementing the MHSA we have pledged to look beyond "business as usual" to build a system where access will be easier, services more effective, out-of-home and institutional care reduced, and stigma toward those with severe mental illness or serious emotional disturbance will no longer exist.

I believe my prior work experiences make me well qualified to lead the implementation of the MHSA. As Deputy Director of Operations at the Employment Development Department (EDD), I developed and implemented a new strategic plan for the statewide Unemployment Insurance (UI) Program and Labor Exchange Services Program to convert the UI Program from an in-person service to a primarily telephone service program. The plan resulted in improved customer access to services and better coordination of services with local partners. Customers are no longer required to report in person to an EDD field office. Instead they can access services by telephone. Customers who choose in-person services can obtain assistance at one-stop sites statewide. By establishing six telephone call centers that handle over 20 million calls a year, we reduced the number of EDD UI Program offices from over 150 to 45 with an eventual reduction to less than 20.

While my program experience at EDD provided valuable skills for the issues facing the Department of Mental Health, my experience in administrative services and financial management will be especially helpful in establishing the systems and processes necessary to successfully manage the funding from the MHSA and other existing fund sources in the

Department. My experience at EDD in streamlining the UI process and improving customer access coupled with my extensive fiscal experience at the Department of Social Services, EDD and Caltrans will help me work with the Director and stakeholders to direct the effective and fiscally prudent implementation of the MHSA.

The Department has developed an inclusive process for MHSA implementation that ensures that all stakeholders are informed and have an opportunity to participate in policy development and program design. Planning guidelines provided to county mental health departments require that they also include stakeholders in their planning processes. Working with counties and other stakeholders, the Department developed a set of guiding principles to transform the mental health system, to use MHSA funding and all other existing resources more effectively, and to move toward the future we envision. I am familiar with this public participation process. In implementing the strategic plan at EDD, I conducted a series of town hall meetings with staff and stakeholders prior to implementation to obtain their input on the changes we proposed to make. I conducted follow up meetings during and after the transition to keep managers and stakeholders up-to-date on implementation. This process was very similar to the process we are using to implement the MHSA.

II. Increase consumer involvement in all aspects of the mental health services system.

Implementation of the MHSA will affect all aspects of community-based services. We are conducting an extensive planning process at the state and county level to ensure that the plans we develop lead to transformation of the system. I am committed to increasing the involvement of consumers and family members in all aspects of the mental health services system. Working with the Director, who is also committed to this principle, I will ensure that we use the funding increase provided by the MHSA to make significant progress in this area by preparing consumers to participate in the planning process and providing the education and training opportunities that they need to be proactive.

The MHSA dedicates funding for Human Resources, Education and Training Programs. My goal, as Chief Deputy Director is to use a portion of this funding is dedicated to train consumers to participate as service providers. I will also ensure that we continue to look for opportunities to hire consumers into positions in the Department. Consumers who have had personal experience with the mental health system provide unique perspective on the needs of service recipients to achieve independence. Their participation in policy decisions and program development improves the quality of our decisions to better meet the needs of the people we need to reach.

III. Implement the "recovery" model in all state hospitals.

The traditional treatment model in state hospitals focuses on patient problems and not on preparing patients for release from the hospital. Patient assessment is based on identifying disorders, deficits, disabilities, and diseases. Treatment includes symptom management through drug therapy, psychotherapy, behavioral therapy, and medication education. The

reduction of symptoms and control or management of symptoms and behavioral problems are the desired outcomes. Under this model, the patient is the passive recipient of services determined by the clinicians. In the recovery model, treatment is focused on both symptom recovery through traditional treatments and functional recovery. Greater emphasis is placed on functional recovery which will enable patients to live independently despite having a severe and persistent mental illness. Under the recovery model, the individual is an active participant in identifying the skills and supports he or she will need in a specific environment (e.g. community, work, school, home) when he or she is released from the hospital.

I am not a mental health clinician and cannot actively participate in the development of specific treatments, but my extensive management skills and experience in successfully implementing major programmatic changes have prepared me well for this position. I possess the skills and knowledge to direct the implementation of the recovery model in the state hospitals. I am doing this by setting specific measurable implementation objectives, providing the necessary encouragement and support to hospital administrators and clinicians, and holding them accountable for achieving the desired outcomes. The Division of Long Term Care has already established specific objectives with due dates and I will be monitoring progress and taking appropriate action to keep this program on schedule.

IV. Ensure that county expenditure of state and federal funds comply with state and federal laws and regulations.

The County Mental Health Departments operate as Mental Health Plans by providing mental health services to consumers directly or through contract providers. Over \$2 billion of federal matching funds flow through the Department of Mental Health to the counties to pay for these services. A portion of the match for federal funds to serve children with serious emotional disorders is provided by the State through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The Department carries out its responsibility to ensure appropriate expenditure of funds through technical assistance and audits of county and provider claims.

The significant reductions in staffing over the past several years have strained the Department's ability to stay current on audits of the counties and of service providers. Working with managers in the Department's Compliance Division, I have established objectives to significantly improve our audit program to ensure that we are current on the audits of the counties and service providers. We are also prioritizing the workload to ensure that audits with statutory due dates are completed on time. I have established a regular reporting process to track our audit progress and outcomes. In addition, we have established objectives to provide technical assistance to counties and providers and to ensure facilities are in compliance with existing regulations.

The Honorable Don Perata
May 6, 2005
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V. Recruit and retain a well-qualified staff.

Dedicated, well-qualified employees are an essential element of a successful department operation. Recruiting and retaining licensed clinical staff, especially psychiatrists and registered nurses, is an ongoing challenge for the Department. My goal is to develop a recruitment and retention plan to meet the ongoing needs at the department headquarters and in the state hospitals. I will also develop a succession plan to ensure that qualified leaders are ready to step into the large number of management positions that will become vacant as a result of retirements in the next few years. I will use my years of experience working with the State Personnel Board, Department of Personnel Administration, Department of Finance and other control agencies. In the coming months I will bring these control agency experts together with managers in the Department to develop these plans.

The Department of Mental Health is responsible for providing leadership and direction for public mental health services. I appreciate the opportunity to share with you a number of my goals regarding the Department of Mental Health. I have only highlighted some of the most critical ones. I look forward to discussing these and other issues at my confirmation hearing on May 18, 2005. Please call me at (916) 654-2309 if you would like to discuss these or other Departmental issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Garcia", written in a cursive style.

ROBERT L. GARCIA
Chief Deputy Director

16 April 2005

Honorable Senator Don Perata
Chairman, Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento, CA 95814.4900

Attn: Nettie Sabelhaus, Rules Committee Appointments Director

Dear Senator Perata:

Thank you for the opportunity to respond to your questions regarding my re-appointment to the Medical Board of California, where I currently serve as a member of the board's Division of Medical Quality. As a returning member, and the board's secretary, member of the executive and enforcement committees and chairman of the public education committee, I am pleased to see the interest of the Senate Rules Committee in those being appointed and re-appointed to the board. It is equally humbling to know you are interested in my views on the very critical issues faced by this board in the coming years. Though there may be more to their length than you desire, I hope my thoroughness is helpful. If my answers require clarification or more information, I look forward to working with you and your committee and/or attending your session to respond.

General Questions:

1. What are your goals and objectives as a member of MBC? What do you hope to accomplish during your tenure?

Since I have worked on the board for about three years and worked with the revision of our mission statement, my goals and objectives are to focus on that mission. For reference in the remaining questions, the mission follows:

The mission of the Medical Board of California is to protect the healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act.

In particular, I will continue my work focusing on raising the profile and awareness of the board with key constituencies, including the consumers we serve, professionals we regulate, other healthcare professionals and institutions that impact our board (e.g., hospitals, courts, related regulatory boards, etc.) and the legislature. To achieve this goal, some of my key objectives include: 1) implementation of the recent Enforcement Monitor's report, with special emphasis on obtaining the resources the board needs to continue its operations and implementation of key enforcement changes that will better fulfill the mission of the board, and 2) implementation of the strategic communications plan adopted by the board.

2. What do you believe to be the highest priority of the MBC? How should this be accomplished?

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facilitation strategic communications public affairs

MBC's highest priority is its stated mission – consumer protection. Accomplishment of this mission should focus on implementation of the Enforcement Monitor's report, obtaining and stewarding the resources necessary to fulfill our mission, and proactive communications with consumers and key constituencies to foster their support of the board's work.

3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?

Yes. The report is an extensive compilation of recommendations resulting from a thorough analysis of the board's mission, goals, objectives, programs, operations, staffing, and resources. Currently, as a member of the board's enforcement committee, I am working with the Enforcement Monitor, board staff, the legislature and the administration to prioritize and operationalize the report.

4. What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly. (Also, please identify the recommendation by numbers used in the report.)

The Enforcement Monitor has done a thorough and careful analysis of the board per my statement above; notwithstanding, the report has its detractors. That should be expected. I served as a member of the public information disclosure committee of the board. This committee contributed significantly to SB1950 (Figueroa), which created the Enforcement Monitor position. The report has resulted in a comprehensive preliminary set of recommendations (a second report is due later this year) which the board, through its enforcement committee and staff, is prioritizing and implementing. Rather than detail the report by number, since the report is lengthy, I would indicate that the actions that the board is taking to work thorough its committees, staff and working groups (consisting of board member-constituent-staff) to establish a comprehensive matrix for implementation is a thoughtful, strategic and timely method for implementing (and evaluating) the Enforcement Monitor's report. This process is allowing for prioritizing the most important and urgent issues, and identifying which require legislation, regulation, administration and/or further dialogue.

5. What recommendations do you believe are the highest priority?

The most important recommendation involves the objective of obtaining the necessary resources for the board to continue. Without successfully implementing this recommendation, the board will not have the funds to continue its operations and the legislature will have to develop an alternative model for the regulation of physicians in California. Much like the process the legislature undergoes to establish the state budget, this is a defining public policy decision/priority for this board, those it regulates and those who establish the board's authority. No other recommendation is as important as this one; not addressing it would a fatal flaw.

If this recommendation is successful, then the board can focus on the remaining priorities. Those would include addressing: a) vertical prosecution, b) diversion, and c) the myriad of

recommendations around the obtaining and disclosure of information critical to healthcare consumers about those whom this board regulates.

6. Do you agree that this ["the enforcement process takes too long to protect the public... the lengthy time for the procurement of essential medical records is among the greatest problems facing MBC's district offices and among the principal sources of overall case processing delays." The Enforcement Monitor recommends that the MBC enforce the existing law requiring the MBC to review within in the timeframe.] is a problem? How would you recommend that the existing process be improved to resolve the delay?

Clearly, this delay is one of many that the board faces in processing complaints and implementing its regulatory authority over its licensees. It is taken out of context to say it "...is among the greatest problems facing MBC's district offices..." If the board is without the resources to operate, this problem will be a minor one by comparison. The board, during my tenure, has been plagued with budget cuts, resource diminution and other challenges that prevent it from operating with an efficiency and effectiveness it might if it were a private corporation. As a result, it is not surprising that those who choose not to cooperate in a timely manner with the board's investigatory process are able to do so with little or no retribution. Implementation of this recommendation is important. It should be put into the context of implementing more broadly the overall recommendations regarding appropriate funding of the board. The board must acquire the resources to implement not only this recommendation, but the entire package of recommendations that will ensure the board's mission can be honestly and genuinely fulfilled on behalf of the healthcare consumers it serves and the legislature that created it.

7. Do you support the Enforcement Monitor's recommendations that physicians license renewal fees should be increases to at least \$800 biennially? If so, why? If not, why?

Yes. Rather than belabor this, I believe my prior (and likely subsequent) answers will firmly establish my belief that, without the resources to properly fulfill its mission, the board should not be holding itself out to the public or its licensees that the board has the capacity to offer any consumer protection. I have served on and chaired other state boards since the mid-80s. This is a familiar issue in the field of professional regulation throughout this and other states in the country. I completed my graduate work while studying the regulation of professions and have read the literature on this issue. No issue causes more debate and consternation than the fees charged to the licensees who are regulated. However, I also maintain my licenses in this state as a marriage and family therapist and as a real estate broker. I happily pay those fees for the privilege of maintaining my active licenses, though I no longer practice either profession. I have many close friends and colleagues who practice medicine, and have worked with clients over the years in my public affairs practice, including Kaiser Permanente, the Council of Community Clinics, Alliance Healthcare Foundation, and Scripps. I cannot imagine any of those whom I know, upon appropriate review of the board's public records regarding its financial operations, objecting to funding the operations of the board so that it can fulfill the vital functions it serves on behalf of consumers and healthcare professionals in this state. To argue against the proper funding of the board and investment in the resources to fulfill its mission is to argue for the eventual demise of the board functions.

8. What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?

The other recommendations regarding vertical prosecution may contribute to a degree of more cost-effective and efficient operations. In addition, the board should seriously consider privatizing its diversion program and removing itself from this costly, time-consuming, and arguably beneficial program. A new cost structure that changes this from an entitlement to a "pay as you go" program will also assist with one of the key financial areas on which the board expends funds.

9. Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hand off" process? Please explain, briefly.

Yes to the first question. As a member of the Division of Medical Quality and the enforcement committee, I believe the Enforcement Monitor has presented an option to the board that will help us implement a system that will a) result in better cases (from a due process and other legal perspective), b) save money and c) decrease processing time. This recommendation, if implemented, will provide a benefit to healthcare consumers, who look to the board as an extension of the state, to remedy their problems through the board's complaint process, i.e., problem physicians practicing at risk to the public. This will also benefit physicians who withstand the lengthy process in which they find themselves during the course of an investigation. Proper milestones for evaluation of this system will need to be installed to ensure it does achieve these objectives and no assumption should be made that it will achieve those objectives without those evaluation mechanisms in place.

10. What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent? [This question refers to the Division of Medical Quality (DMQ) review of proposed decisions.]

I have served as a member of review panels on both this and another healthcare board. In the prior instance, I was a licensee of that board. In this instance, I am a public member. I cannot underscore the value of this review process in both instances. The additional information fostered by the review of cases through the exchange of insights and views from medical and non-medical professionals often results in identification of issues that the Administrative Law Judge (as a non-medical practitioner) did not see or understand because that ALJ relied upon the "expert" witness to guide the medical component of the case. I have often said to both physicians and non-physicians alike (both the organized medicine lobbyists and the consumer advocates who regularly attend our public meetings), you cannot appreciate what this case review does for both physicians and the public until you've done it. The cases are turned around quickly and the panels act swiftly. In my experience, it results in better application of the law and more effective implementation of the public policy at the core of the board's mission.

However, as this is an area of some controversy, I believe the board ought to develop and review a range of alternatives to determine if there is a better way to achieve the results, and I have provided input to staff to consider this recommendation as part of the board's enforcement committee's actions at its next meeting in order to thoroughly and objectively evaluate this recommendation.

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as other stakeholders? Briefly, why or why not?

This is one of the most troubling issues this, and many similar boards, face. Consumers, with the advent of the Internet, have, can and will learn more and more each day about their healthcare decisions. Many of those whom I know in the medical profession welcome informed consumers as a part of their process of effective assessment, diagnosis, prognosis and treatment of their patients. Albeit, information about malpractice (and the myriad of other information one should expect when procuring health-related services) can be misleading, confusing and of questionable value. Nonetheless, it is required by hospitals, professional associations, specialty boards, medical malpractice carriers and therefore must offer some value to them. I believe there are alternatives to providing this information, with appropriate education to consumers, guided by experts in the field of consumer law, malpractice insurance and others that will result in the better practice and regulation of medicine in California. I am committed to work, on behalf of the board, to seek those alternatives and solutions through the collaborative effort of those we regulate, malpractice carriers, organized medicine and healthcare consumers in California.

12. Do you believe the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?

No to the first question. As chairman of the board's public education committee and a prior member of the public information disclosure committee, I have worked closely with the board's staff to develop and implement a strategic communications plan on behalf of the board and consistent with the board's overall strategic plan. We also have worked with a member of the public who regularly attends the board and committee meetings, with a representative of organized medicine and the board's public information officer to seek new, innovative and proactive methods for communicating information to the public. The committee and the board have and should continue to seek more effective methods for disclosing information to, and educating, the public so that the board's mission and related goals are accomplished. Our emphasis should be, "What can we do to help the public and our licensees so that the practice of good medicine is the norm and the aberrant and bad practice is obvious to physician and public alike, and swiftly and with due process, eliminated?" Disclosure is a critical component of that and we should look not only to the recommendations of the Enforcement Monitor, but to the other organizations affected by, and that impact our work, to continue the collaboration that the public education committee has initiated and the board has supported to bring about change in our overall disclosure framework.

13. What steps have been taken, and will be taken, to address the issues raised by the Enforcement Monitor? Do you have recommendations for improvements? If so, please indicate them?

A matrix has been created by staff enumerating each of the recommendations. The recommendations have been prioritized and the board has already acted on the critical ones, such as vertical prosecution, necessary funding and development of board resources (fee increase). The enforcement committee has prioritized other recommendations based on the matrix and is working with Senator Figueroa's staff on legislation to implement them. Additionally, the board will

the steve alexander group

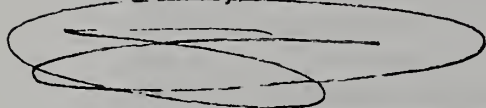
pursue regulatory change where the recommendations can be implanted in that manner and administrative change where appropriate. The enforcement committee is conducting meetings and hearings to further refine and implement other recommendations and pursue alternatives and options.

It is important for the success of the board in achieving its mission that a thoughtful, collaborative and strategic process be implemented to ensure the recommendations are considered seriously, evaluated objectively, and implemented timely. As a member of the board, and in consideration of my re-appointment, I am committed to that process.

In closing, thank you again for the opportunity to respond to your questions, share my thoughts and views and hopefully, provide you with sufficient information for my re-appointment to the board. I consider this a privilege and an important public trust on behalf of the over 100,000 physicians and allied healthcare professionals we regulate and the millions of consumers who expect us to perform our duties above and beyond reproach, with the highest of integrity and the commitment to the mission of this board and its authority under the laws of this state.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Steve Alexander', enclosed within a large, hand-drawn oval. The signature is written in a cursive, somewhat stylized manner.

Steve Alexander



CEDARS-SINAI HEALTH SYSTEM.

April 14, 2005

Nettie Sabelhaus, Appointment Director
California Legislature
State Capitol
Room 420
Sacramento, CA 95814-4900

Dear Ms. Sabelhaus:

This letter is in response to your letter dated April 7, 2005 regarding my reappointment to the Medical Board of California. I am pleased to respond to your questions.

I would like to preface my remarks by giving the Committee some insight into my background. I was appointed to the Medical Board of California by Governor Gray Davis in December of 2000. Since then I have served as President of Division of Medical Quality for 2 terms, Secretary of the Board, Vice President of the Board, Chairman of Panel "B" for 3 years, Chairman of the Public Disclosure Committee and Chairman of the Enforcement Committee.

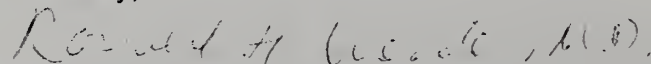
1. My personal goal is to effect as many of the changes to the DMQ as recommended by the Monitor's report and to support legislation to accomplish those areas that need legislative approval.
2. Obviously, public protection is the primary goal of the entire Board. This is accomplished by judicious licensing procedures and better, more timely, investigations by the DMQ.
3. Two years prior to the Monitor's report, I spent over 60 hours in the Central Compliant Unit in Sacramento and in multiple field office meetings with investigators and supervisors. In addition, I met with over 50 attorneys from the Attorney General's office who did MBC cases. I wrote a report, which outlined many of the changes that were recommended in the Monitor's report. I believe the report is accurate.
4. I have reviewed the report and agree with the recommendations. I am running the Enforcement Committee and we are currently implementing the recommendations, through work group sessions.
5. The most important recommendation in the report is the vertical prosecution model, which I recommended in my original report. This combined with moving the investigators to the Department of Justice will solve a significant number of problems. I recently met with the head of the Department of Consumer Affairs to present this proposal.

APR 21 2005

6. The vertical prosecution model with attorney's involved at the beginning will solve much of the delay, because the defensive bar will know that subpoena's will be issued very quickly and all legal remedies will be used to acquire medical records.
7. I have gone through the financials with Dave Thornton, the Executive Director of the Board. We have met with CMA on multiple occasions to show the flat revenue line compared with the increasing costs. Without the increase the Board will be in violation of State mandate by 2006.
8. The Board has lost over 20% of it's positions. Field offices have been consolidated; however, the Attorney General's fees have increased as well as the cost of experts due to AB1950. The only option is to outsource the drug and alcohol rehabilitation program to cut costs and maintain at least the current level of enforcement.
9. It was very clear from my study 2-1/2 years ago, that integration of investigations with the attorney's early was a far more effective and timely way of dealing with the investigations. This is the model used in virtually all other Federal and State agencies.
10. In 85 to 90% of the cases the AIJ decision or stipulation is approved. However in 10+% there are some greivous errors, which are discovered by panel review. The least time consuming part of the process is the oversight review. I would continue this process for AIJ decisions not stipulations.
11. I chaired the Public Disclosure Committee, which created the original recommendations incorporated into AB1950. After 3 months of work, meeting with insurers and examining what other states do, I will stand by the original recommendation that all settlements over \$30,000.00 and all malpractice judgments be posted. The public is entitled to know.
12. I believe I answered question 12 in question 11. I believe that for public protection we have an obligation to have a well informed public with as much information as possible.
13. I have chaired the Enforcement Committee and it is currently divided into smaller work groups. We have a matrix of the recommendations. We have had four meetings and have begun to institute a majority of the recommendations. Legislation was introduced to move the investigators into the Department of Justice and we have requested the vertical prosecution model be supported by the Department of Consumer Affairs.

I hope these answers give you insight into my feelings about the Board. I look forward to the opportunity of completing a task actually started four years ago.

Sincerely,



Ronald H. Wender, M.D., Chief, Department of Anesthesiology
Cedars-Sinai Medical Center

Vice President, Medical Board of California

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16

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 112
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 25, 2005
1:40 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 112

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, MAY 25, 2005

16 1:40 P.M.

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24 Reported by:

25
26 Evelyn J. Mizak
27 Shorthand Reporter
28



APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SUZANNE M. AMBROSE, Director
Fair Employment and Housing

BARBARA LEHMAN, Executive Director
Human Rights and Fair Housing Commission
City and County of Sacramento

RONALD JOSEPH, Director
Department of General Services

DON GONNAVILLE, President
California Disabled Veterans Business Alliance

MARC APREA

1 STEPHAN CASTELLANOS, President
2 California Council of the American Institute of Architects
3 FAIA

4 RICHARD H. ROSS, Chief
5 Bureau of Automotive Repair

6 RODNEY PERINI, President and CEO
7 California Automotive Wholesalers Association

8 SHELLY LEVY, Executive Director
9 Automotive Service Councils of California
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4 Committee Questions, as well as Responses
5 By the Following Members of the California
6 Veterans Board: VERNON CHONG, M.D.;
7 JAMES C. CRUMP, JR.; and WILLIAM D. JACKSON
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to reconvene.

We're going to go to Item Three, the Governor's appointees that are appearing today, the first of whom is Suzanne Ambrose, the Director of Fair Employment and Housing.

Please come forward. You may open when ready.

MS. AMBROSE: Senator Perata and Members of the Committee, thank you for providing me this opportunity to share with you my goals as the Director of the Department of Fair Employment and Housing.

Never could I have imagined 19 years ago, when I called the DFEH legal office and asked to volunteer as a law student, could I have imagined that I'd be sitting here before you today. But I also was equally surprised that I was lucky enough to get hired as a staff attorney, and then become the Assistant Chief Counsel and the Chief Counsel of the department.

It's truly an honor to have been selected by the Governor to lead the state's civil rights agency, a department that I've devoted my career to.

As you know, the department's primary mission is to investigate, resolve, and if necessary litigate complaints alleging discrimination in housing, employment, public accommodations, and hate violence.

The department also has a responsibility to educate businesses and housing providers on their obligations under the law.

As Director, I have several goals for the

1 department. When I first came back to the department in August
2 of last year, I sat down with the staff and really took a good
3 look at what our immediate needs were. And what we discovered
4 was that we had some very outdated Call Center equipment that we
5 think was contributing to a decline in complaint filings. So,
6 one of the goals of my administration is to really increase
7 access to the department.

8 Just last month we replaced the Call Center
9 equipment with state-of-the-art equipment, so we're able to
10 track call volume, wait time, how long we're spending on the
11 phone. And it'll allow us to redirect resources when we have
12 high call volume to address those needs.

13 Another thing that we have done recently is, in
14 '03-04, the department closed its San Bernardino district
15 office. We think as a result of that closure as well as two
16 other office closures, we've experienced a decline in the number
17 of complaints filed. In that area alone, we've suffered a 35
18 percent decrease in complaint filings. So just last month we
19 were able to partner with the Senior Center out in San
20 Bernardino. They're providing us free office space, and we have
21 brought back three retired annuitants to conduct in-take out in
22 San Bernardino to make our services more accessible to folks out
23 there.

24 One other thing we've done recently is, we've
25 brought on law students on a voluntary basis to assist our Call
26 Center in conducting in-take over the phone.

27 Another initiative that we're looking at is
28 bringing back our earlier mediation program in an effort to

1 expedite the complaint process when we're able to. We have a
2 number of complaints that could be resolved early on in the
3 process. It assists the parties in resolving the dispute before
4 spending department time and resources and a lot of energy on
5 the part of the different -- the two parties to respond to our
6 investigation.

7 So, what we've done is recruited a number of
8 mediators out in the field, and on a voluntary basis they are
9 mediating cases for us. So, early on in the process, if both
10 parties agree to go to mediation, we're sending those cases out
11 to mediators and, hopefully, reaching resolution early in the
12 process. We've started that in Northern California, and we're
13 going to be expanding that in Southern California in the next
14 couple of months.

15 Some long-term initiatives include better
16 automating our systems so people can file complaints on-line;
17 they can set appointments on-line. We're hoping to really save
18 some staff time with those initiatives.

19 And then lastly, I wanted to talk about our
20 outreach and education. We know that most employers want to
21 comply with the law. We have a very complex area of law,
22 particularly in the area of disability discrimination, which is
23 one of our highest volume complaints. And what we're doing is
24 going out and really doing a lot of outreach in education for
25 employers, hoping to help them comply with the law and come up
26 with ways of preventing discrimination in their workplace.

27 One recent initiative we've started is educating
28 employers to the new requirement, effective January 1st of this

1 year, to conduct sexual harassment prevention training for all
2 of their managers and supervisors. And so, the first half of
3 the year we spent just telling them about the requirement, and
4 then the second half of the year we're actually going out,
5 providing that training to employers, the first of which was
6 last week here in Sacramento.

7 I hope I've been able to provide you with a
8 general idea of my goals as Director of DFEH, and I look forward
9 to working with the Legislature to ensure that enforcement of
10 the state's civil rights laws is a top priority for the state.

11 CHAIRMAN PERATA: Thank you.

12 Just to sort of follow up on the decline in
13 complaints, it would seem that you're hoping the technology
14 helps you bridge the gap between the loss of employees and
15 people who are filing complaints.

16 MS. AMBROSE: Right.

17 CHAIRMAN PERATA: At some point I guess you have
18 to make an evaluation, once you're teched up to a point you
19 think is adequate, whether or not the lack of employees will
20 cause the mission to suffer. I'd be very interested in knowing
21 about that.

22 You could send it to me anonymously.

23 The other question is, are we relying or having
24 to rely, is your department finding itself in a position of
25 relying more on volunteers and law interns, like you were, to do
26 the work that should be done by staff?

27 MS. AMBROSE: Well, I mean, certainly, you know,
28 our staff is working to their capacity.

1 We're trying to augment that with, yes, seeking
2 volunteers, retired annuitants, people we've trained in the past
3 who've come back to help us, law students, mediators who are
4 volunteering to mediate cases for us.

5 I think, you know, the idea is to sort of exhaust
6 all avenues in these tough budget times. It's really something
7 that we need to be proactive in doing. And I think that, along
8 with the improvements in technology, should gain a lot of
9 momentum for the department.

10 CHAIRMAN PERATA: Any questions by Members of the
11 panel?

12 Anybody here to speak in support? Please come
13 forward. I'm fully confident that you can be brief and be in
14 good stead.

15 MS. LEHMAN: Chairman, Members of the Committee,
16 Barbara Lehman, Human Rights, Fair Housing Commission for the
17 City and County of Sacramento. I'm their Executive Director.

18 I've had the pleasure of working with Suzanne
19 Ambrose for the last 15 years in investigating and trying to
20 mediate employment and housing discrimination complaints.
21 Suzanne has been very active in all of our community outreach,
22 not only here in Sacramento County but statewide, particularly
23 around hate crimes. She's served on a lot of panels discussing
24 the issue, and how DFEH has brought that issue to the forefront.
25 And we certainly know statewide how strong the impact can be
26 when it comes to a hate crime in our community.

27 It's a rare opportunity that a local jurisdiction
28 can work with a state agency as well as we work with Suzanne.

1 I'm thrilled that she's here.

2 I'm asking for your support. I know she'll do an
3 outstanding job.

4 CHAIRMAN PERATA: Thank you.

5 Anyone further? Anyone in opposition?

6 Pleasure of the Committee?

7 SENATOR BATTIN: Move the nomination.

8 CHAIRMAN PERATA: We have a motion to move the
9 nomination.

10 Do you have family here?

11 MS. AMBROSE: No.

12 CHAIRMAN PERATA: Please call the roll.

13 SECRETARY WEBB: Ashburn.

14 SENATOR ASHBURN: Aye.

15 SECRETARY WEBB: Ashburn Aye. Bowen.

16 SENATOR BOWEN: Aye.

17 SECRETARY WEBB: Bowen Aye. Cedillo.

18 SENATOR CEDILLO: Aye.

19 SECRETARY WEBB: Cedillo Aye. Battin.

20 SENATOR BATTIN: Aye.

21 SECRETARY WEBB: Battin Aye. Perata.

22 CHAIRMAN PERATA: Aye.

23 SECRETARY WEBB: Perata Aye. Five to zero.

24 CHAIRMAN PERATA: Congratulations.

25 MS. AMBROSE: Thank you.

26 CHAIRMAN PERATA: We're going to go back to Item
27 Two.

28 [Thereupon the Committee acted

on legislative items.]

CHAIRMAN PERATA: Now we have Ronald Joseph, Director of the Department of General Services, that little department we have.

Welcome.

MR. JOSEPH: Thank you, Senator Perata, Members.

I appreciate the privilege you've given me to be here today to discuss some of the challenges that face the Department of General Services and some of my goals for the department.

The Department of General Services has a very unique role in state government. The scope of its functional responsibilities is quite broad, yet we receive no General Fund money, relying solely on the fees paid by various state and local agencies that use our services.

Its charge is to provide these agencies the benefit of a centralized business agent, professional expertise, access to a broad range of specialized services, and efficiencies of scale that surpass what could be achieved on their own.

I want to outline four broad goals that the department has focused on in the coming year, although candidly, none of them can be achieved by DGS alone.

The first is to build and strengthen those systems that will enable the department to consistently deliver on its commitments to its customers.

The second is to support a structure for state procurement processes that drive best value for the taxpayers

1 while assuring transparency and fairness to vendors that do
2 business with the state.

3 The third is to continue and enhance the
4 standards and procedures to ensure the efficiency and the safety
5 of our school buildings.

6 The fourth is to lay the foundation for the
7 coming era of sustainable, environmentally responsible building
8 practices.

9 All these objectives, I believe, are critical to
10 meeting the mission of General Services in the coming years. I
11 would like to expand just briefly on these goals.

12 The first is to make the state a more efficient
13 manager of its business dealings. On assuming the position at
14 General Services, I was immediately struck by the lack of
15 centralized data, verifiable data, that could serve to make
16 policy decisions. There was no centralized inventory for
17 property, for real property, for the state's vehicle fleet, or
18 for the purchases that had been made in just the prior year.

19 The result has been a business management process
20 that is too reliant on unsupported best judgment and frustrates
21 the efforts of those who would seek to improve the situation.

22 To confront this problem, we have already begun
23 to develop the data and business systems that will provide
24 California with better tools by which to manage its
25 operations. I am proud to announce that General Services has
26 developed a database of all real estate owned and leased that is
27 used by state agencies. This is available to policy members --
28 policy makers and any member of the public at our web site.

1 While current information is partial for many of those
2 properties, I believe it will become much more robust and
3 reliable as agencies complete providing full information.

4 General Services is very close to providing a
5 similar tracking system for the state's vehicle fleet. Having
6 completed our inventory of the state's vehicles pursuant to
7 Senate Bill 552, we are now engaged in the design of a data
8 system that will maintain ongoing records of this fleet and how
9 it is used so that we can provide a better tool for the
10 management of this important asset.

11 The department's Strategic Sourcing Initiative is
12 also central to transforming how the state serves as the
13 strategic agent for taxpayers. As we move towards an
14 enterprise-wide approach to procurement, we are developing the
15 data systems we need to track and analyze our spending.

16 My second goal goes hand-in-hand with the first.
17 We need to take a fundamental look at the structures and
18 processes of procurement in the state. As our processes have
19 developed over time, meeting the needs of specific challenges
20 that the system faced, new policies or standards were layered,
21 one on top of another. The result has been that General
22 Services has found itself becoming adept at applying process,
23 but perhaps less so at analyzing the state's needs and seeking
24 out best procurement practices.

25 To address this, General Services has been
26 concentrating on the skills of its own workforce and the
27 statewide procurement workforce. Our California Procurement and
28 Contracting Academy is an example of the sort of efforts that

1 need to be made and that we are working on. In the past year,
2 we have delivered more than 40,000 hours of training to
3 procurement officials around the state. And as we assist
4 departments in building capacity and building procurement
5 professionalism, it will give us the opportunity to work to
6 improve the systems that deliver the goods that we use.

7 My third goal is to ensure that our public school
8 buildings meet the highest standards of safety and efficiency.
9 Through the State Architect, I look forward to providing the
10 necessary leadership to continue the division's commitment to
11 aiding school districts and community colleges construct safe,
12 accessible, high performing schools. A major part of that
13 commitment will be to take the steps necessary to provide timely
14 plan checking so that projects are not delayed during these
15 times of high inflation in construction.

16 I will also be working closely with the State
17 Architect, the Real Estate Services Division, and the
18 environmental community to lay the foundation for the future of
19 California's sustainable building practices. California has
20 been a leader in green building for over two decades, but much
21 has changed in the art and science of building design and
22 construction since the 1970s. What has not changed is our
23 responsibility to be good stewards of the earth's resources.

24 That is why the Department of General Services is
25 taking a lead role in promoting the administration's goal of
26 integrating green building practices into all aspects of design,
27 construction, and building operations statewide. We are
28 focusing not only on the design of new buildings, but on the

1 re-engineering of existing buildings to meet high standards of
2 energy efficiency, accessibility, and overall building
3 performance.

4 As the administration focuses on California's
5 energy challenges, General Services is in a position to exert
6 leadership in this field and achieve results.

7 I want to close by sharing with you that I am
8 excited about this position, and excited about the opportunities
9 that face the Department of General Services. As you know, I've
10 spent more than 30 years in state service and am intimately
11 familiar with the state's traditional processes and modes of
12 operation, most of that experience having been gained as a
13 customer of General Services.

14 That experience gives me an understanding of how
15 essential General Services is to the functioning of the state.
16 General Services not only saves its customers money, it saves
17 them time, effort, and attention that they can otherwise use to
18 address their core competencies of delivering important vital
19 services to the people of California. I am committed to working
20 toward the development of the programs and procedures that will
21 move the Department of General Services in this direction.

22 I thank you for your time and look forward to
23 addressing any questions.

24 CHAIRMAN PERATA: Thank you, sir.

25 Any questions from the dais?

26 I'd like to ask a question that's from a
27 colleague. This is from Senator Speier. She sent you a letter
28 on Monday, so I'm sure you've got that all taken care of; 48

1 hours should be ample time. I suspect this is going to be asked
2 prospectively about the contract for purchases of Hepatitis C
3 medication, and specifically she is concerned that we're not
4 paying more for the medication than the VA pays.

5 I don't know if you know the answer to that
6 question. If not, you can sit down and talk with her.

7 MR. JOSEPH: I will be contacting Senator Speier.
8 We've had some discussions with her office.

9 We're seeking now the information relative to the
10 Veterans' Administration, which I don't have transparency of
11 right now, but also answering her question about the ability of
12 the Department of General Services to make available its costs.
13 I will be contacting the Senator.

14 CHAIRMAN PERATA: Terrific. Thank you.

15 Any questions?

16 SENATOR BATTIN: Mr. Joseph, last year I passed
17 SB 1752; it was a surplus property bill. There were two parcels
18 in the bill: one was 24.71 acres in the Northern California
19 Youth Reception Center and Clinic; then the other one was the
20 Fred C. Nelles Correctional Facility on East Whittier Boulevard
21 in L.A. County.

22 Have either one of these properties been sold
23 yet?

24 MR. JOSEPH: The closure has not been completed
25 on either of them, sir, but we are moving. In fact, have been
26 working very closely with the City of Whittier regarding the
27 Nelles property.

28 We anticipate completion of transactions on

1 those. I cannot guarantee that it will be within this fiscal
2 year, but it is very close.

3 SENATOR BATTIN: This fiscal year?

4 MR. JOSEPH: I said I could not guarantee within
5 this fiscal year, but we are very close.

6 SENATOR BATTIN: The fiscal year ends in a few
7 days.

8 CHAIRMAN PERATA: That's actually lightning
9 speed.

10 SENATOR BATTIN: Yes.

11 So, you think then shortly thereafter?

12 MR. JOSEPH: Yes, sir.

13 SENATOR BATTIN: So sometime late summer?

14 MR. JOSEPH: I will be happy to keep you and your
15 office apprised of how we are moving.

16 I would believe that that is a very reasonable
17 timeframe, late summer.

18 SENATOR BATTIN: How are you identifying now
19 surplus properties? What's the process that you have to
20 streamline the information that you have in reference to those
21 properties?

22 MR. JOSEPH: Actually, if I could address that in
23 two manners, in two ways.

24 The first, I would say, is, as I mentioned, for
25 the first time the state now has an accessible database that
26 everyone can look at and identify properties that are already
27 declared surplus by the Legislature, or are potentially surplus
28 based upon the agency, the owning agency's use of those

1 properties. And so, we have a much better ability to identify
2 and then work with our colleagues in other departments in
3 assisting us to identify properties that are no longer necessary
4 for their mission, or may be traded for other properties to
5 achieve their mission and thereby freeing up those.

6 In this year, we have a surplus property bill.
7 There are currently 26 properties in that bill. That is not an
8 enormous number of properties, certainly, but as you point out,
9 historically, the surplus property bill has been only a small
10 number of properties. We are achieving more identification of
11 more available properties by working with our agencies.

12 SENATOR BATTIN: As I'm sure you're aware, I've
13 spent some years trying to get arms around the surplus property
14 issues that we had. When I first started dealing with this, I
15 met with great frustration from the state agencies. It just
16 seemed to me that they viewed what they had as some type of
17 benefit to them. They just were not willing to give up any
18 property. And then worse yet, they were pretty hesitant, and
19 sometimes flat out refused, to give the Legislature their
20 property lists.

21 When we did get those lists, they were just very
22 confusing. And really, to single one agency out, one of the
23 most difficult times we had was with Caltrans. They gave us a
24 computer printout that meant nothing to anyone. Basically it
25 was a computer code and an amount. That amount was what they
26 purchased the property for. It didn't even say when they
27 purchased that property. So, those two numbers don't mean
28 anything to anyone.

1 And then when we asked about it, they said,
2 "Well, you just have to give us the code number and we can
3 search this out for you."

4 I am hoping that you've had better luck than the
5 Legislature did with them, and that they're giving you complete
6 information that you can identify property on. Because I'll
7 tell you, since I started this, what's happened is, cities have
8 come to me and said, "You know, there's this Caltrans lot they
9 don't use any more. And there's a triangular piece of property
10 right next to it. We can take that, we could buy that from
11 them, and we could use it. But we've never been able get them
12 to acknowledge us."

13 It's just not one little city. It's going on all
14 over the state.

15 So, if you had better luck, I'd like to hear
16 about it.

17 MR. JOSEPH: Well, Senator, I'm happy to say that
18 every agency has been very cooperative in providing us the
19 information about the properties that they own or lease or
20 otherwise maintain.

21 So, I can tell you with some degree of comfort
22 that the property database, the statewide property inventory
23 that's available on our web site, is very nearly if not
24 absolutely complete with every property.

25 Now, as I stated, I will -- I will say that
26 there's more information, more definition that is necessary on a
27 number of those properties because, quite honestly, a number of
28 agencies did not keep information with an eye toward making it

1 valuable or useful to a public that may want to see it. So,
2 there may be descriptors unique to their program which makes
3 sense to them and not the broader public.

4 But as I say, the agencies have been very
5 cooperative in putting together this database, and I have every
6 confidence that they'll continue to work with us to make it,
7 then, more readable and useful, and hopefully, have more than a
8 locator number that has little meaning.

9 SENATOR BATTIN: No meaning.

10 One of the things that we talked about when you
11 came into my office was, you know, symbols mean things and are
12 important to people. It's always frustrated me that the symbol
13 of the state agency that's in charge of making sure we have
14 reasonable use of property, and that we don't become too
15 extravagant is housed in the Money Store, this grand pyramid
16 building out in West Sacramento.

17 I know that you didn't acquire that lease on your
18 watch. The former Senator that did is no longer with DGS. He
19 had a little problem with Oracle.

20 And I expressed that to you, and I told you even
21 my frustrations that it was all lit up like a Christmas tree
22 every night, and finally got that turned off.

23 Something I did not know when we were discussing
24 this, and when you told me, I thought you deserve some credit
25 for your actions in public, which was, one of the reasons that
26 the former Director of DGS wanted to have that building was, he
27 just had a really, really cool office. It was big, and huge,
28 and very high-end.

1 Tell me about what you had did with that office
2 and where you are office is currently.

3 That's a soft ball, by the way.

4 MR. JOSEPH: Senator, I don't know the motivation
5 for the prior Director's choosing that office, but the office
6 was rather large and could be put to better uses, in my
7 estimation.

8 Right now, it has been partitioned into the
9 center. It's been partitioned to allow us to create the center
10 of green building and energy programs that I alluded to
11 earlier. Under the Governor's Executive Order, this has become
12 a major charge of General Services, and we've created a strike
13 team housed within the executive office to be sure we implement
14 the energy conservation programs that this state needs.

15 I, in turn, am on the other side of the building
16 in a quite functional office.

17 SENATOR BATTIN: The reason I bring that up is
18 that nobody here would have asked you the question about your
19 office, and nobody would have known that you moved out of an
20 office that was grand in scale and luxurious, and that you did
21 that on your own. It wasn't anything that the Legislature or
22 Governor told you you needed to do.

23 I think that is a credit to you in your
24 management of understanding that symbols do mean things, and
25 leading by example does mean something. And I applaud you for
26 that, and thank you for turning the lights off on the Money
27 Store at night.

28 MR. JOSEPH: Thank you, Senator.

1 SENATOR BATTIN: It will help keep us from lights
2 going out in the rest of the state during the hot summer.

3 Thank you, Mr. Chairman.

4 CHAIRMAN PERATA: It's not the lights. It's the
5 air conditioning he's worried about.

6 Senator Cedillo.

7 SENATOR CEDILLO: Specific request along those
8 lines.

9 There is property in my district that is declared
10 surplus. Next door to the property is a project that is doing
11 services for the state, training and rehabbing, with much, much
12 applause, former residents of CDC. It's such a natural that
13 they're growing, they're expanding, they're doing a great job.
14 And so, it makes sense that they could grow right into the next
15 door neighbor -- I think they actually abut each other -- that
16 they would grow right into the next door neighbor, the
17 Department of Motor Vehicles.

18 The problem is, somewhere in between that thing
19 that makes such obvious sense, we're having trouble. One is
20 declared surplus, and we seem to have an inability to ring that
21 bell so that we could make the good sense of allowing the next
22 door neighbor that's providing services for us, the state, to
23 move into it.

24 MR. JOSEPH: Senator, the property is currently
25 surplus, okay.

26 Senator, I'll be contacting your office in the
27 morning and get more particulars on that and see what the
28 options are.

1 SENATOR CEDILLO: Right. We want that
2 unsurplused. We have an entity that can put it to immediate
3 valuable use for the state, and that is performing state
4 services, state functions.

5 MR. JOSEPH: I'll contact you in the morning,
6 thank you.

7 CHAIRMAN PERATA: Another question, Senator
8 Battin?

9 SENATOR BATTIN: I did, and I apologize.
10 The other problem that we found when we were
11 looking in the surplus property world was that there were lots
12 of state facilities that were in very valuable areas that didn't
13 have to be there. There's examples up and down the state, from
14 right on ocean front properties where it's got a little science
15 lab, Where you could easily put that anywhere, and it's worth
16 millions of dollars, the land.

17 How are you identifying? What is your plan to go
18 through the state's resources, agency by agency, in identifying
19 those properties that could be sold, the facility could be
20 moved, and it would save the tax payers literally hundreds of
21 millions of dollars over time.

22 MR. JOSEPH: Well, Senator, as I say, part of the
23 process we've been following as we identify properties is
24 working directly with the agencies to determine the need of the
25 current properties relative to their program delivery goals.
26 Because as you state, in some cases it's not readily apparent
27 why that location is critical to program delivery. And we're
28 opening these discussions.

1 I should say that, referencing your example, this
2 year there's some property in the Costa Mesa area that has been
3 sold that would fit under that category. In this year's surplus
4 bill, the San Diego State Building, which is a very -- on very
5 valuable property --

6 SENATOR BATTIN: Is that on Front Street?

7 MR. JOSEPH: Down on Front in San Diego -- is in
8 the surplus bill with an eye toward --

9 SENATOR BOWEN: Maybe get the city out of
10 bankruptcy.

11 SENATOR BATTIN: They don't get it.

12 MR. JOSEPH: So, we are making some slow,
13 nevertheless positive steps in that regard. And we're
14 continuing to work agency to agency, out of State and Consumer
15 Services Agency, with the various agencies, trying to identify
16 those higher value properties where there may be an opportunity
17 to move to lower -- lower priced areas.

18 SENATOR BATTIN: Are you getting cooperation?
19 Frankly, are you getting cooperation from the agencies?

20 MR. JOSEPH: Frankly, I believe the cooperation
21 is coming. I mean, honestly, and as you've identified, when the
22 subject was first opened it was a little bit shocking, perhaps,
23 and met with some resistance. But we've been somewhat
24 consistent about this. We continued to work with agencies;
25 continued to open up new doors. And more and more, we're having
26 discussion.

27 I think that's spoken, or that's reflected in the
28 fact that we are looking at more properties this year in the

1 surplus bill than last, and the fact is, we're continuing to
2 have open conversations.

3 SENATOR BATTIN: We had more properties than last
4 year's surplus, but the Assembly Democrats took them out in the
5 very last minute.

6 CHAIRMAN PERATA: Preservationists.

7 SENATOR BATTIN: And then there's legislation to
8 empower you to have more authority over the acquisition and
9 management of buildings, which I think is a good idea as well.

10 Thank you again.

11 CHAIRMAN PERATA: Anybody in the audience have
12 any property they want to talk about?

13 [Laughter.]

14 CHAIRMAN PERATA: Senator Bowen.

15 SENATOR BOWEN: No questions about real estate.

16 I do want to talk about a few different subject
17 matters. First, this will come no surprise to my colleagues on
18 the Committee, a few words about credit cards.

19 A 2001 study by the American Association of Motor
20 Vehicle Administrators pegged the in-person check transaction
21 costs at \$10.72 for personnel and check processing costs; while
22 e-government transactions cost \$3.83, including the \$2
23 transaction fee that credit card companies charge.

24 DGS's estimates that they gave me from 2004,
25 which include the cost of processing mail with a machine or by
26 hand, copying checks, stamping the back of each check, filling
27 out deposit slips, running two adding machine tapes to make sure
28 the math is correct, sealing checks in a bank bag and delivering

1 checks to the bank for deposit, indicates that it costs the
2 Department of General Services \$64 per check to process a paper
3 check. And that doesn't include the cost of the float loss,
4 which is the interest income that you lose as you wait for the
5 check to clear. That's obviously lower with the new banking
6 regulations.

7 I note in your answers on the credit card
8 questions a willingness to look at the issue of convenience
9 fees, which are an impediment to having Californians pay for
10 various fees, tuition, whatever, on-line.

11 Can you talk a little bit about how that might
12 work?

13 MR. JOSEPH: Yes, Senator.

14 I think it's more than a willingness. I think
15 it's a recognition of the responsibility pointed out by your
16 staff that the Department of General Services may have in
17 serving as a fair agent, if you will, pulling together different
18 departments, and how they might look at the cost of accepting
19 credit cards.

20 What we have been told, as the Department of
21 General Services was preparing to go out for another
22 solicitation for credit card acceptance firms, we convened a
23 group of more than 25 departments to talk about their needs, how
24 they use credit cards, how they might be structured. And that
25 group wanted to preserve the opportunity, wishes to preserve
26 today, the opportunity that the department, the individual
27 departments would make the determination as to whether or not
28 they would assess a convenience fee for accepting credit or

1 debit cards, or whether they would absorb it.

2 And in reviewing the questions raised, one of the
3 issues that became apparent to my staff and myself as we looked
4 at it is, there are a number of studies out there now that
5 suggest two issues. Number one is, when a state agency accepts
6 credit cards, they find the use -- without a fee, they find the
7 use to rise dramatically and become the majority of
8 transactions.

9 And secondarily, that when that day arrives, when
10 the majority of transactions are conducted by credit card, the
11 staff and processing infrastructure can decline, thereby making
12 it cost effective, if not cost beneficial, to move to acceptance
13 of credit cards.

14 Now, with that as a potential goal, getting to
15 that point may create some difficulties for individual
16 departments because it may take a number of years to get from A
17 to B.

18 So what I have proposed, and we have already
19 embarked upon, is using this group that have been brought
20 together to aid and assist General Services in the solicitation,
21 to sit down and identify the equation that might be put to their
22 business processes to identify where the savings might be, how
23 those savings might be expedited, and how you could move in a
24 relatively short period of time to a no-cost or cost preferable
25 arrangement by accepting credit cards. And that is what I
26 propose that we do.

27 SENATOR BOWEN: I greatly appreciate that. I
28 actually think it's probably one of the single most important

1 cost savings drivers for the future of California, is to
2 actually enable these e-government transactions.

3 I note that the Governor has removed the fee at
4 the Department of Motor Vehicles, and the result is that
5 significantly more people are completing their DMV transactions
6 on-line, and obviously the counter service is -- not obvious,
7 but we know counter service is the most expensive thing to
8 provide, and the most annoying for our citizens.

9 My one concern about the working group is that
10 there be some outside assistance in doing the cost benefit
11 analysis.

12 Let's face it. If you are a department, and you
13 can go to credit card transactions and still keep the fee, why
14 not? Right?

15 MR. JOSEPH: Yes.

16 SENATOR BOWEN: So, I think we probably need some
17 assistance in looking at that.

18 And then from there, I would hope that we could
19 take a look at the data. And it may be that not all agencies,
20 departments, whatever, are similarly situated because of risk
21 factors and various things like that. But in places where it's
22 clearly a cost savings, I would much rather have the state
23 taxpayers spend their money on other things than stamping the
24 backs of checks and running two adding machine tapes, which --
25 enough said on that topic.

26 Would you talk a little bit about the Master
27 Service Agreement with credit card vendors? This is another
28 issue that I've been interested in because the fees in

1 California appear to be high compared to what some local
2 governments have been able to negotiate.

3 MR. JOSEPH: Yes, Senator.

4 I believe we're just beginning on that process.
5 I was made aware as well that, perhaps, California was not
6 getting best pricing among states. And in fact, a number of
7 local jurisdictions were getting better pricing, which, looking
8 at this procurement from a volume basis should not make sense.
9 So, we are starting to look into that. We've had some very
10 positive assistance from the Department of Motor Vehicles, for
11 one, in identifying some areas to go and research.

12 As I say, it's probably a little early for me to
13 suggest that I have any real return on that effort, but we are
14 looking just because we're aware of there being better deals
15 than the state was able to get last time around.

16 SENATOR BOWEN: It appears to me that our total
17 volume in 2004 for credit card usage within state agencies was a
18 little over \$1.1 billion. If that doesn't get us a volume
19 discount, I don't know what would.

20 So, I think it's a way to benefit both the
21 citizens of California and the agencies, and save funds in the
22 future. So, I look forward to working with you on that.

23 If we could talk just briefly about the Cal Net
24 contract. I notice the various applicants who've been
25 interested in telecommunications lurking in the back of the
26 room, behind your back; although, that's not how they operate,
27 and I don't mean to insinuate that they do.

28 You've had a process in which you've recently

1 pulled back the Request for Proposal for a new Cal Net system.
2 Can you talk a little bit about what you have learned from that,
3 what you're expecting to change in a new Request for Proposal,
4 and in particular address the concern about whether there will
5 be only one vendor or whether there might be multiple vendors
6 who participate in the Cal Net offering?

7 MR. JOSEPH: Senator, I hope I can adequately
8 address your questions because since this is a procurement that
9 is ongoing, and we do not have a Request for Proposal on the
10 street at the moment, I'm going to have to be somewhat
11 global.

12 SENATOR BOWEN: We'll focus on what you learned.

13 MR. JOSEPH: Okay.

14 Actually, what we learned when we approached
15 this, and I will go ahead and say this since it's in the public
16 record, was we were really focused on assuring that we were
17 providing the most secure communications, telecommunications
18 backbone that we could.

19 There are over 2,000 users of Cal Net. The
20 state, in fact, is about 40 percent of Cal Net load. Local
21 government and special districts make up 60 percent of the users
22 of Cal Net.

23 We had, and we still believe we have, an
24 extremely important responsibility to assure that whatever we
25 bring out in terms of Cal Net in Cal Net II meets the needs of
26 all those users with the highest degree of reliability.

27 Therefore, the Request for Proposal that was
28 issued previously reflected that. And it was focused on

1 assuring that we met that first and foremost.

2 I don't need to say that a number of the
3 community which I hear is lurking behind me raised a number of
4 questions about the wisdom of that, about whether or not we
5 would adequately position the state to take advantage of new and
6 emerging technology.

7 Through the process of questions and answers and
8 bidders conferences, there were over 500 issues and questions
9 raised about the RFP on the street. And I know that there was
10 probably some belief that we were going to bull ahead no matter
11 what and stay the course. In fact, we very attentively listened
12 to the questions that were being raised, the concerns that were
13 being brought forward, and we looked closely. And that is why
14 we pulled back the RFP.

15 We're looking at it now. We're giving serious
16 consideration to all of the issues that were raised. And by
17 September, we plan on reissuing the RFP.

18 SENATOR BOWEN: What did you learn from that
19 experience, aside from how much fun it is to deal with that
20 whole question?

21 MR. JOSEPH: We learned that there -- that there
22 were serious considerations.

23 I'm sorry. If I speak about what we learned
24 technically, I suggest what may be developed in the next one.

25 We learned that there are serious questions
26 raised and that were due additional consideration.

27 SENATOR BOWEN: Well, I guess we will, as Senator
28 Burton would have said, see the proof in the pudding when the

1 new RFP comes out.

2 I really am focused on procurement on a lot of
3 these issues, because I've spent more time than you want to know
4 in the years that I've been here working on procurement issues.

5 I was concerned when I read about the impediments
6 to the ability of the Department of General Services to
7 negotiate and award contracts to save the state money on
8 pharmaceuticals. We know that in all health care, including
9 health care that the state pays for, that the cost of
10 pharmaceuticals is probably the biggest cost driver.

11 Your answers indicate that at the department
12 level, staff members' ability to participate is limited, given
13 their heavy workloads associated with actual providing of
14 services, medication and so forth.

15 What does DGS need in order to evaluate the
16 client data that it has and enable DGS to take advantage of
17 programs like the Massachusetts -- whatever it's called;
18 Massachusetts Alliance?

19 MR. JOSEPH: Actually, if I can address the last
20 part of the question first, the Massachusetts Health Alliance
21 I'm sorry, what we call the GPO, the purchasing process.

22 We already utilize and have at General Services
23 as one of our three methods for purchasing pharmaceuticals. The
24 three methods are direct contract with manufacturer, the GPO, or
25 the group purchasing organization. In this case it's the
26 Massachusetts Group Purchasing Organization. And thirdly, what
27 we call the prime vendor, which is currently McKesson, where we
28 get wholesale acquisition cost.

1 Those are really the declining preference as well
2 because directly negotiated contracts we find to be the lowest
3 price. The group purchasing organization offers the next best
4 opportunity, and the prime vendor, finally, the third.

5 So, we have already been using Massachusetts for
6 about a third of our purchases. And we saved about \$13 million
7 last year over the wholesale acquisition cost.

8 Now, we're looking to expand that, however,
9 because Minnesota has also begun to put together a group
10 purchasing organization, and we've been in contact with
11 Minnesota, comparing their benchmark pricing against
12 Massachusetts to determine if there's opportunity for even
13 better value there. So, we will continue to do that.

14 Now, the first part of your question, though, is
15 what more can we do to take advantage of our size and our
16 ability to purchase.

17 I really think a large step toward improvement in
18 that area was probably taken in the last couple of weeks in the
19 Legislature and in the fiscal committees, where a number of
20 proposals by the Legislative Analyst, which we had been working
21 on anyway, were adopted in Budget Committee.

22 For instance, the proposal to add three positions
23 to this effort, where we can go out and work more effectively
24 and interactively with departments, so that we can move drug
25 purchasing up the priority scale and be more effective.

26 Additionally, language was adopted, directing us
27 to work more closely with the University of California. Now,
28 you may have heard discussed before 340-B pricing, which is the

1 most preferential pricing you can get on pharmaceuticals, but
2 it's not available directly to the state. It is available to
3 the University system as a federally recognized system.

4 Perhaps by working with UC, we can have the
5 opportunity to propose merging, a coordination of our systems in
6 a way that we can get 340-B pricing.

7 So, a number of the LAO recommendations which we,
8 as I say, we have been working on, we think provide a lot of
9 opportunity, we will be pursuing in this next year.

10 SENATOR BOWEN: Thank you.

11 One final area, again from a number of
12 discussions over the years, has to do with the price that
13 families and clergy members pay when an inmate makes a collect
14 call from a California Correctional facility.

15 There's been a long-time issue because it isn't
16 the inmate, but rather the family members, and we've had in the
17 hearings we've done on this clergy members testify. In fact, we
18 had some clergy members and family members testify that they've
19 told incarcerated parishioners or family members to stop calling
20 because they can't afford the bill.

21 Currently the rate on a call is 22 cents per
22 minute. That's actually dropped from 28 cents per minute, so
23 we're going in the right direction, but nonetheless I think if
24 all of us took a look at what we pay on a per minute basis, it
25 doesn't come anywhere close to that.

26 I understand that there are security issues,
27 monitoring issues, and so forth. But I'm still concerned about
28 the fact that contracts are being written and bid in a way that

1 provides a profit to the state rather than focusing in keeping
2 inmates and their families connected, which is a benefit to all
3 of us when, as happens with most inmates, they're released.

4 Can you address the question of the cost of
5 collect phone calls?

6 MR. JOSEPH: Yes.

7 Senator, I can tell you that the Department of
8 Corrections and the agency, the Youth and Adult Corrections
9 Agency, is looking at new methods, such as PIN debit systems and
10 the like, which may offer an opportunity in future contracts to
11 bring that price down more.

12 However, that does not answer your direct
13 question relative to the surcharge, if you will, that the state
14 takes, the \$26 million a year which is built into that contract,
15 where the winning bidder must provide a \$26 million a year
16 commission fee to the state.

17 That was -- yes, we built that into the Request
18 for Proposal. We really had no choice. It was a figure that
19 was contained in the state budget, and so we needed to reflect
20 that.

21 Actually, that \$26 million ended up being a
22 compromise figure, a reduction from prior years where it had
23 grown more. And that was something, when the Department of
24 General Services was going out to release the Request for
25 Proposal, had to reflect that because it was a budgeted item.

26 SENATOR BOWEN: Let me ask you about the PIN
27 debit system. I think the first hearing I attended when we had
28 a discussion of that was one that was convened by Senator

1 Polanco. And I think it was 1999, or it could have been 1997.
2 If it was 1999, it means that CDC and CYA and the Department of
3 General Services have been looking at the PIN debit card issue
4 for five or six years.

5 Can you tell me when I might expect you to be
6 finished looking at it so that we can have some
7 recommendations? As you know, it is used in other states.

8 MR. JOSEPH: Yes, I do.

9 When I arrived at General Services, this contract
10 was coming to a conclusion. I'm not trying to defer
11 responsibility here, but it was one of the questions I had asked
12 about, the use of calling cards, credit cards, PIN debit and the
13 like.

14 And what I was informed was that they had not
15 determined a way that they could work that into the system
16 without creating security risks within the facility, because
17 having a card like that, or having access to a number like that
18 actually is currency in a facility.

19 SENATOR BOWEN: Although you can't use it unless
20 you have a telephone. The card itself doesn't get you anything
21 unless it's used with a telephone, and it's access to the
22 telephone that provides the security since, in most of these
23 situations, there's not free access to a telephone. It's
24 supervised.

25 MR. JOSEPH: And looking at that, and as I say, I
26 have been informed that CDC and YACA are continuing to look at
27 this.

28 I will commit to making sure that information as

1 to progress in this area is conveyed to your office.

2 Not coming from the security arena, I'm not
3 sure.

4 SENATOR BOWEN: You have some very experienced
5 staff on your staff that know the issue well and whom I think
6 have a good sense of the security.

7 All of these telephone calls are monitored, every
8 single one, and there's a recording. I can't remember the
9 number of seconds, but basically it eats about 20 out every 60
10 seconds telling the person that they're receiving a telephone
11 call from within a correctional institution.

12 So, there's some fair procedures, I think, that
13 can deal with that. There have been concerns expressed about
14 criminal activities coming from within a prison, but there also
15 are a lot of concerns about keeping inmates connected with
16 families, with kids, and with a social structure that often are
17 what makes a difference between them becoming taxpayers again
18 when they're released, and recidivating, which is not good for
19 anyone.

20 MR. JOSEPH: Yes.

21 SENATOR BOWEN: Thank you.

22 SENATOR ASHBURN: Just very briefly, I want to
23 thank you for your outstanding career in state service.

24 MR. JOSEPH: Thank you.

25 SENATOR ASHBURN: The experiences that you bring
26 are tremendous and commendable.

27 You probably have, in my opinion, one of the most
28 fun opportunities in state government because your department

1 touches every aspect of state government.

2 I would just encourage you, as one Senator in
3 voting for your confirmation, to not worry about the past, the
4 way things have been done in the past, the sacred cows, the
5 people that may stand in the way and nay-say all along the way,
6 but to move us to a whole new opportunity.

7 There are so many new technologies. There are so
8 many new ways that we can more efficiently provide services to
9 the public and save the taxpayers money at the same time.

10 And you're going to be the leader in that, and I
11 commend you for your willingness to take it on.

12 The only other area is, if you haven't heard
13 enough in terms of opportunities, is in the area of rental cars.
14 This is something about which I have complained every year that
15 I've been in the Legislature, that if I go as Member of the
16 Legislature and put down a blue card on the counter, the General
17 Services card, it will cost me exactly double what it will cost
18 me if I put down my own personal credit card.

19 We're talking about the purchasing power and the
20 volume of the State of California in contracts that have
21 negotiated -- negotiated, no less -- with these car agencies.
22 It's unbelievable that we would double pay what I, as a private
23 citizen, can pay just because I do it in the name of the state
24 government.

25 So this, and in so many other areas, this state
26 ought to flex its muscle and get the best value. And a much
27 higher level of service, especially as you explore new
28 technologies.

1 I just want to commend you and wish you well.

2 MR. JOSEPH: Thank you, Senator.

3 CHAIRMAN PERATA: Anybody here who'd like to say
4 something that hasn't been said yet? I'm anxious to hear.

5 MR. GONNAVILLE: Mr. Chairman, Members of the
6 Committee, my name is Don Gonnville. I'm the President of
7 California's Disabled Veterans Business Alliance.

8 On several occasions we've contacted Mr. Joseph's
9 office to solicit his opinion and to address concerns of
10 interest on matters concerning the disabled veteran business
11 community. Mr. Joseph has always listened to us very
12 attentively, and has always addressed our concerns in a very
13 fair and a very professional manner.

14 He's a very busy man, and yet he takes time on a
15 regular basis to come by the advisory council meetings, disabled
16 veterans council meetings, that are held at the Department of
17 Veterans Affairs, to see what's going on there. He's been very
18 helpful in helping us to address those concerns through that
19 forum.

20 We feel also that Mr. Joseph's leadership has
21 been very instrumental in helping the DVBE community achieve a
22 higher than ever level of participation in state contracting
23 since the program was instituted in 1989.

24 For these reasons, the California Disabled
25 Veteran Business Alliance strongly supports the confirmation of
26 Mr. Joseph as the Director of the Department of General
27 Services.

28 Thank you.

1 CHAIRMAN PERATA: Thank you, sir.

2 MR. APREA: Chairman Perata, Members of the
3 Committee, for the record my is Marc Aprea. I'm here to urge
4 your confirmation of Mr. Joseph.

5 When Ron assumed the duties of the Director of
6 the Department of General Services, the department had been
7 under a series of interim and acting directors over the course
8 of a number of years. And when I met with him about year ago,
9 he set a tone of being very direct, very transparent, and being
10 someone who sought to solve problems. Since then, he has
11 maintained and sustained that tone.

12 I think his testimony today is an example of
13 that. So therefore, we would urge that you allow him to keep
14 that post and confirm his nomination.

15 Thank you.

16 CHAIRMAN PERATA: Thank you.

17 MR. CASTELLANOS: Mr. Chairman and Members, I'm
18 Steve Castellanos, FAIA. I'm President of California Council of
19 the American Institute of Architects.

20 On behalf of the 10,000 members of the AIA in
21 California, we're also here to support the confirmation of
22 Mr. Joseph as the Director of the Department of General
23 Services.

24 Just as the gentleman before mentioned, we've
25 come to understand Mr. Joseph's willingness to listen, and to
26 partner, and to work with us in cooperation. And we see it as a
27 tremendous value not only to our members, but also to all the
28 citizens of the State of California.

1 We also have to applaud, you know, his commitment
2 and the administration's goals in a few different areas, and I
3 think I mentioned this in my letter to you. The first, of
4 course, is assuring access for all of California's disabled
5 population. It's a tremendously important issue. Putting
6 people to work that are capable in California and are barred
7 from employment because of a lack of access is certainly a
8 commitment to the state that this administration joins with all
9 California's architects in.

10 We also applaud the administration's and
11 Mr. Joseph's commitment to lessening the environmental impact of
12 the public buildings and public schools that the state is
13 responsible for by adopting practices and regulations that
14 assure their environmental energy efficiency. We applaud
15 Mr. Joseph's and the administration's commitment to emphasizing
16 excellence in leadership in architectural design and
17 construction, project delivery.

18 And lastly, probably in my view most importantly,
19 we think it's tremendously important for the department to act
20 as a knowing influence on the marketplace by engaging in
21 practices that use the size of California's investment in
22 buildings as a positive model.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 Any further? Anybody in opposition?

26 SENATOR BATTIN: Move the confirmation.

27 CHAIRMAN PERATA: Do you have family here?

28 MR. JOSEPH: No, I don't, thank you.

1 CHAIRMAN PERATA: Please call the roll.

2 SECRETARY WEBB: Ashburn.

3 SENATOR ASHBURN: Aye.

4 SECRETARY WEBB: Ashburn Aye. Bowen.

5 SENATOR BOWEN: Aye.

6 SECRETARY WEBB: Bowen Aye. Cedillo.

7 SENATOR CEDILLO: Aye.

8 SECRETARY WEBB: Cedillo Aye. Battin.

9 SENATOR BATTIN: Aye.

10 SECRETARY WEBB: Battin Aye. Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye. Five to zero.

13 CHAIRMAN PERATA: Congratulations.

14 MR. JOSEPH: Thank you very much.

15 CHAIRMAN PERATA: Our final appointee today is
16 Richard Ross, Chief of the Bureau of Automotive Repair.

17 I have a lot of questions for you.

18 MR. ROSS: Senator Perata, thank you, Senators.

19 I have a written statement. I'll just summarize
20 it.

21 I appreciate the honor to be here. I would like
22 to introduce my wife, Donna, who's here with me today in support
23 of me.

24 CHAIRMAN PERATA: Excellent, a family member.

25 MR. ROSS: And with all due respect, she's more
26 important than anything else.

27 CHAIRMAN PERATA: Good for you.

28 MR. ROSS: I spent most of my adult life in

1 either state or federal public service. I have enjoyed that. I
2 have found it challenging, I have found it satisfying.

3 As Chief of the Bureau of Auto Repair, I look
4 forward to assisting the 35 million Californians in their
5 capacity as consumers of automotive service, and I look forward
6 to working with the auto repair industry to protect and assist
7 them.

8 I believe that this area makes a very positive
9 contribution to California in the way we live, the quality of
10 our life in the greatest state in the greatest country.

11 I believe from my public service experience, I
12 know the law prescribes the role of a government official. And
13 within that spectrum of authority, I'll be very responsive to
14 consumers' needs as well as responsive to industry's needs.

15 I believe as a regulator, one must always act and
16 carry out your duties with a concept of fair dealing, and yet
17 with proper fulfillment of due process procedures.

18 Objectives that I would strive for relative to
19 measurements of achievement would be to, one, to facilitate a
20 quality business environment through communication and
21 information; strive to identify and eliminate business practices
22 that victimize consumers; and equally support quality business
23 practices and provide recognition to these positive actions.

24 I believe that eliminating those who compete
25 unfairly, demean the industry reputation, or victimize consumers
26 should be dealt with promptly and fairly.

27 I believe that the Smog Check Program requires me
28 to provide a broader understanding of that program to the

1 citizens as to their acceptance and compliance with reducing
2 vehicle emissions. And I would pursue technology and programs
3 that efficiently improve emission reductions. Emission
4 reductions improves the quality of our life, and frankly, that's
5 something I can feel very good about being involved with.

6 My life experience has shown me that cooperation
7 is an effective and efficient tool, and listening is a critical
8 part of cooperation, and I listen hard.

9 I will work with local and state agencies, and
10 the private sector, as to accomplishing our mutual objectives.
11 And as to Bureau operations, I believe in fiscal responsibility,
12 accountability for actions, and I expect the same from others.

13 I'd be glad to respond to any questions, sir.

14 CHAIRMAN PERATA: Thank you, sir.

15 Questions?

16 I'm going to just profess my ignorance about your
17 department. What's the most common kind of complaint that you
18 get?

19 SENATOR CEDILLO: I'll tell you.

20 MR. ROSS: After smog.

21 CHAIRMAN PERATA: So it is smog?

22 MR. ROSS: Generally it is the questions that
23 arise as to trying to understand and explain the program.

24 Most of us only get noticed once every two years,
25 so there's a long time between lessons. And if you transact a
26 vehicle, sometimes you acquire one that's exempt from testing,
27 so it's not like the last two years. So there is some confusion
28 in understanding.

1 We do a lot of public outreach, available
2 information, so that the consumer can get access to these
3 things. We notice it in registration documents. But like most
4 of us, we're not ready to be educated until we have a problem.
5 So oftentimes, it's at that juncture in a person's life with the
6 program that we really interact.

7 CHAIRMAN PERATA: Tell me about Test Only. You
8 know, I think I was here when we voted on that. I don't
9 understand why I did at the time. Now that I drive by these
10 things and it says Test Only, I still don't know.

11 How is that going?

12 MR. ROSS: How's it going? Actually, it has been
13 implemented since '97. It was part of the state's agreement
14 with the federal government to be in compliance with the federal
15 Clean Air Act. It was California's way of keeping the Smog
16 Program in the private sector rather than, if you will, growing
17 government and having state-controlled testing stations, which
18 is, more or less, the federal model and a model used in most
19 other states.

20 To accommodate that, the State of California had
21 to agree to a kind of a check-and-balance system. The check and
22 balance was that there would be stations that only tested, so
23 there would be no incentive whatsoever to affect the outcome
24 either for favoring a long-time customer, or to facilitate
25 selling extra service. Just so that there would be one entity
26 that does one thing.

27 The state agreed to do that, to put this in the
28 private sector. And the number of vehicles that are required to

1 go there help facilitate the Air Resources Board in
2 demonstrating that the State of California is fulfilling that
3 obligation.

4 What hangs in the balance is a lot of federal
5 highway funds in terms of compliance, not to just that part of
6 the state's pollution implementation plans, but the automobile
7 does represent a very significant portion of the pollution
8 contributions.

9 So, it's a big weight in the scale as to
10 impacting on pollution, sir.

11 CHAIRMAN PERATA: That's helpful, thank you.

12 Senator Battin.

13 SENATOR BATTIN: To change a little bit from
14 smog, which I'm sure you'd be glad not to talk about, to
15 something we discussed when we had met, and that was the
16 regulators or investigators sometimes going a little beyond the
17 pale of what is proper to press a case.

18 I talked to you about this, but I want to point
19 this out publicly as well.

20 I had years ago, he's since sold his car
21 dealership --

22 CHAIRMAN PERATA: Excuse me, Senator Battin, if I
23 might.

24 Senator Bowen has to leave for a medical
25 appointment. I'd like to take your motion to approve and open
26 the roll so you might vote.

27 SENATOR BATTIN: Certainly.

28 CHAIRMAN PERATA: Call the roll, please.

1 SECRETARY WEBB: Bowen.

2 SENATOR BOWEN: Aye.

3 SECRETARY WEBB: Bowen Aye.

4 CHAIRMAN PERATA: Back to live action, thank
5 you.

6 SENATOR BOWEN: I'm sorry, but that means you
7 don't get any questions from me.

8 MR. ROSS: I'll give you the opportunity any
9 time.

10 SENATOR BATTIN: That would make you the luckiest
11 one so far.

12 [Laughter.]

13 SENATOR BATTIN: My friend has since retired, and
14 I think he's sailing the world somewhere.

15 But what happened was, a BAR agent came into his
16 dealership -- he was a car dealer -- and looked at his forms,
17 his internal service documents, his forms, and said, "You don't
18 have your BAR ID number on all your forms. State law says that
19 you have to have BAR ID on your forms."

20 He said, "Well, I have them on everything that I
21 give the public. I know my number, and my internal documents
22 don't have it, and nowhere in the state law does it say that my
23 internal documents need to have it."

24 And he'd just spent \$15-20,000 thousand on forms.
25 And he said, "I'll put them on the next time I print."

26 I think there was a disagreement about that, and
27 my friend, being the somewhat blunt guy that he can be, just
28 said, "Okay, you should leave now because I'm not changing it."

1 After that, he was arrested -- he was charged, I
2 should say. It's too strong a word -- with fraud because an
3 accusation was made, because they had brought in a car about a
4 week or two later. They brought a car into his dealership. And
5 for the life of them, his mechanics could not figure out why it
6 would not start. They replaced the battery; they replaced
7 everything, and the alternator.

8 What it turned out to be is that the agent had
9 brought in a car. They had cut underneath the battery cable,
10 pulled it back, clipped out a section in the battery cable, put
11 the cover back on, and of course it wouldn't start.

12 Well, of course, I've never heard of a car ever
13 having a little piece of battery cable disappear out of the
14 middle of it, and neither had any mechanic.

15 And it was ultimately, I think, dismissed and
16 thrown out. It was clearly a set-up. And it was clear to me
17 that it was retribution.

18 I don't think that's proper for any state agency,
19 BAR included, but any state agency to exercise their power
20 through something like that.

21 And I just want to hear your thoughts on that,
22 and how you're going to lead your agency?

23 MR. ROSS: With a circumstance like that, there'd
24 be no one who could sit at this table and say there's any
25 reasonable basis, grounds or justification for that kind of
26 interaction with a business person in California.

27 My desire is to ensure that the personnel of the
28 Bureau, who by and large I find very dedicated and committed to

1 fulfilling obligations of the law, they understand that the
2 general premise, even if one doesn't fully understand all the
3 rules, but be ethical, be legal, be honest.

4 I'm out, meeting with all of my staff so they
5 know me and what I believe in, and what I will look toward them
6 to do.

7 Any situation that gets reported to me, or to my
8 executives, or my staff of management in my regional offices, we
9 will pursue and we will look at that as diligently as we will
10 also enforce the laws and regulations. But that type of
11 behavior, there's no place for that as a representative of the
12 people of California, sir.

13 SENATOR BATTIN: Thank you.

14 CHAIRMAN PERATA: We just got ringing endorsement
15 as I was walking in. Tony Beard said you're a great guy.

16 MR. ROSS: Tony's okay.

17 CHAIRMAN PERATA: Had we started there, we could
18 have dispensed with all this.

19 Is there is anybody in the audience who would
20 like to come forward and say a couple of nice words?

21 You're smiling. That's a good start.

22 Thank you, Mr. Chairman, Members of the
23 Committee.

24 My name Rodney Perini, President and CEO of the
25 California Automotive Wholesalers Association.

26 We represent parts manufacturers, distributors,
27 and retailers in the State of California.

28 We're pleased to be here to endorse the

1 confirmation of Mr. Dick Ross to the Chief of the Bureau of
2 Automotive Repair. This is a man of integrity and straight
3 forwardness and fairness, and we're pleased that he's going to
4 be our representative in the State of California.

5 Thank you.

6 CHAIRMAN PERATA: Thank you very much.

7 MS. LEVY: Good afternoon, Mr. Chairman, Members
8 of the Committee. My name is Shelly Levy, and I'm the Executive
9 Director of the Automotive Service Councils of California. We
10 are a nonprofit trade association representing the interests of
11 independent automotive repair facilities throughout the state.

12 We are here to offer our complete support for the
13 confirmation of Mr. Ross as Chief of the Bureau of Automotive
14 Repair. We feel he will be a great benefit in helping us
15 address this large and increasingly complex industry in the
16 State of California.

17 Thank you.

18 CHAIRMAN PERATA: Thank you.

19 Anyone else? Anybody here in opposition?

20 Seeing none, pleasure of the Committee?

21 SENATOR BATTIN: We already made that motion.

22 CHAIRMAN PERATA: We did. Let's vote on it.

23 Let's call the roll.

24 SECRETARY WEBB: Ashburn.

25 SENATOR ASHBURN: Aye.

26 SECRETARY WEBB: Ashburn Aye. Cedillo.

27 SENATOR CEDILLO: Aye.

28 SECRETARY WEBB: Cedillo Aye. Battin.

1 SENATOR BATTIN: Aye.
2 SECRETARY WEBB: Battin Aye. Perata.
3 CHAIRMAN PERATA: Aye.
4 SECRETARY WEBB: Perata Aye. Five to zero.
5 CHAIRMAN PERATA: Congratulations.
6

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 4:01 P.M.]

11 --ooOoo--
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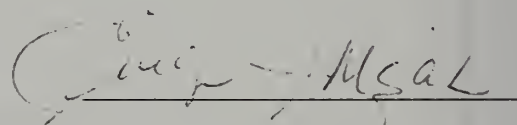
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of May, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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May 16, 2005

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Thank you for providing me with the opportunity to share my goals as Director of the Department of Fair Employment and Housing (DFEH) and respond to your questions regarding case processing issues. Per your request, I have enclosed an updated Form 700, Statement of Economic Interest. Set forth below is a brief description of my short and long term goals for the DFEH, followed by responses to the specific questions listed in your May 6, 2005, letter.

GOALS

The DFEH has a clear statutory mandate: to receive, investigate, and resolve complaints alleging discrimination in employment, housing, and public accommodations, and hate violence. The DFEH's primary function is to process complaints filed for investigation. However, DFEH also has an obligation to provide assistance and education to employers, housing providers and business owners about their responsibilities under the law. All of my goals for the DFEH involve improving the Department's delivery of services and educating the public on compliance with the law.

- ***Short Term Goals***

- *Improve the Public's Access to the Department*

As a result of budget reductions in recent years, the DFEH has significantly reduced its staff and closed three of its district offices in Southern California. The district offices are staffed with investigators who receive and investigate complaints of discrimination. Additionally, upon my arrival in August 2004, the DFEH Communication Center equipment and software was obsolete, and the unit was understaffed and unmanaged, resulting in dropped calls, long wait times, and an inability to monitor and track call volume. Since the Communication Center is the public's initial point of contact with the DFEH, such barriers directly impact complaint filings. Not surprisingly, in 2003-

MAY 16 2005

2004, the DFEH experienced a significant decrease in the number of filed complaints.

- Communication Center

A manager has been appointed to manage the Communication Center and all vacancies in the Communication Center are in the process of being filled. In April 2005, state-of-the-art telephone equipment and software were purchased to allow the Communication Center to track call volume and conduct quality control.

- San Bernardino Satellite Office

Though complaint filings have decreased throughout the state, the areas previously served by the San Bernardino District Office have experienced the largest decrease – 35%. In order to reestablish a presence in that area, we are partnering with the San Bernardino Senior Center which is providing DFEH with rent-free office space two days per week to conduct intake interviews. We have contacted three retired annuitants previously employed as DFEH investigators to conduct the intake in the San Bernardino Satellite Office.

- Law Students

In an effort to shorten the time between a complainant's initial call to the Communication Center and the intake appointment, we have hired and trained volunteer law students in the Communication Center to conduct intake interviews over the phone.

- *Expedite the Complaint Process Through Early Mediation*

- Reestablish the Mediation Program in Northern California

In 2001, the DFEH received a limited-term general fund augmentation to establish a mediation program to resolve employment discrimination complaints early in the process prior to the initiation of an investigation. In June 2003, the DFEH received two-year funding from the federal Department of Housing and Community Development (HUD) to establish a housing mediation program. Since the funding

was limited term, the employment mediation program terminated in 2003 and HUD's housing mediation funding will expire in June 2005. The DFEH is in the process of reestablishing its employment mediation program in Northern California by using volunteer private mediators and the administrative law judges with the Fair Employment and Housing Commission.

- *Conduct Education and Outreach*

- AB 1825 Training

AB 1825 became effective January 1, 2005, requiring employers with 50 or more employees to provide sexual harassment prevention training to all supervisors by January 1, 2006. Since this new requirement is enforced by the DFEH, we have spent the first part of 2005 conducting forums to educate employers on the requirements of this new law. During the second half of the year, we will be partnering with local bar associations to conduct supervisor trainings on sexual harassment prevention. We are also in the process of posting on our website answers to frequently asked questions.

- Quarterly Newsletter

DFEH has recently created a quarterly newsletter that will provide subscribers useful information about the DFEH's jurisdiction, investigative process and litigation activity, in addition to changes in the law, recent court decisions, and new requirements. The first edition was released on May 13, 2005.

- ***Long Term Goals***

- *Expedite the Complaint Process*

- On-line Appointment System

Currently, a complainant interested in filing a complaint for investigation contacts the Communication Center, where a representative conducts initial screening and schedules an intake interview in one of the district offices. This process should be automated so that complainants have the choice

of conducting self-screening and scheduling appointments on-line. We hope to accomplish this goal by the end of 2006 with appropriate funding and/or donated services.

- Automated Right-to-Sue System

Currently, a complaint can be filed for investigation or for an immediate right-to-sue. Complaints filed for an immediate right-to-sue are processed manually, using department time and resources. This process should be automated so that complaints can be filed on-line. We hope to accomplish this goal by the end of 2006 with appropriate funding and/or donated services.

- Expand the Mediation Function Throughout the State

As previously stated, the DFEH is in the process of establishing an early mediation service in Northern California. That service should be made available throughout the state. We are planning to expand the volunteer mediation program in Southern California by the end of this year.

- *Improve the Quality of Service to the Public*

- Training Program for the Staff

Staff needs comprehensive and systematic training on changes in the law, theories of discrimination, investigative techniques, negotiation, evidence, and report writing in order to provide quality service on investigations. A training unit should be established to provide internal training on an ongoing basis. We plan to have a training program in place by the end of 2006, provided resources are available.

- Internal Audit Function

In order to adequately monitor the quality of the Department's services, an internal audit function should be established to review the case processing functions, including the Communication Center, district offices and legal office. Internal audits would help identify issues and problems where resources could be directed or training

could be provided, if appropriate. We plan to have an internal auditor assigned by September 2005.

o *Conduct Outreach and Education*

• Conduct a Widespread Media Campaign

In an effort to inform the public of the laws against discrimination, the Department should issue Public Service Announcements to run on radio and television, issue press releases, and advertise trainings, seminars and conferences in which the DFEH provides informative and useful information about its services and compliance with the law. This program is currently underway and we plan to expand on it on an ongoing basis throughout my tenure as Director.

• Employer and Housing Roundtables

The Department should foster relationships with the employer and housing provider groups to identify common issues and conduct seminars informing them of their obligations under the law, changes in the law, and the Department's processes. We currently have an active Southern California Employer Roundtable (SCERT). We are in the process of establishing a Northern California Employer Roundtable (NCERT) and plan to have that operational by the end of 2005. We are also in the process of partnering with the Employer Advisory Council in the Fresno/Bakersfield area to establish a DFEH component to that organization. We plan to establish housing roundtables with housing provider groups by the end of 2005.

QUESTIONS AND ANSWERS

1. In the last few years the backlog in cases exceeding the one-year deadline has started to creep up with 193 such cases in fiscal year 2003-04 and 28 cases so far in fiscal year 2004-05. What do you believe are the reasons for this?

There is a combination of reasons for the increase in cases exceeding the one-year deadline. Since 2001-02, while the number of investigated cases has remained about the same, the number of authorized positions has decreased. In 2003-04, the Department experienced a spike in the number of cases exceeding the one-year deadline, nearly double from the previous

fiscal year. That spike coincided with the closure of three district offices and reduction in staff. Additionally, DFEH leadership was in transition as a result of the change in Administrations and was without a Director throughout fiscal year 2003-04. Though these reductions were made under the prior Administration and before I became Director, the staff who experienced the reductions believes that the spike in expired cases for 2003-04 was likely due to the instability caused by the reduction and relocation of staff and the lack of adequate monitoring during the transition in leadership.

Since my appointment in August 2004, we have been closely monitoring the case expirations. Though our goal is to complete all investigations within the one-year deadline, it is worth noting that, for fiscal year 2004-05, the number of expired cases is projected to decrease significantly from 2003-04. As of May 1, 2005, the number of expired cases for fiscal year 2004-05 was 33.

- 2. *The percentage of the overall complaints that were subsequently filed for investigation has declined from a high of 56 percent in 2000-01 and 2001-02 to a low of 46 percent in 2003-04 and the first nine months of 2004-05. Please explain the reasons for this reduction in cases filed for investigation?***

The sharp decline in the number of complaints filed with the DFEH is a serious concern.¹ Since 1996-97, the average number of complaints filed for investigation with the DFEH has been 10,222. In 2003-04, the number of complaints filed for investigation dropped to 7446, a 27 percent decrease. This significant drop in complaint filings coincides with the reduction in staffing and the closure of three district offices. Simultaneously, DFEH had instituted a freeze on all non-case-related travel, negatively impacting outreach and education activities. Though complaint filings have decreased in all of the district offices, the highest decrease has occurred in the counties previously served by the San Bernardino and Ventura offices.

In an effort to increase access to the DFEH in the San Bernardino area, we have recently partnered with the San Bernardino Senior Citizens Center to conduct intake two days per week. The Senior Center is providing DFEH with rent-free office space and the intake will be conducted by DFEH retired annuitants. We are also actively conducting outreach throughout the state, through conferences, seminars, webinars, newspaper and television interviews, and a quarterly newsletter. We are currently creating Public Service Announcements which we plan to release to radio stations throughout the state.

¹ The chart contained in your letter of May 6, 2005, differs slightly from the DFEH's data. The DFEH's data shows that the percentage of complaints filed for investigation in 2000-01 was 52 percent and for 2001-02 was 53 percent.

- 3. *There also appears to be a downward trend in the number of complaints filed with the department in the last few years. Recognizing that you became director in August of 2004, what might be the reasons for this decrease in filed complaints?***

As previously stated, staff who experienced the reductions believes that the closure of the three district offices and the reduction of one-third of the staff, combined with a hiring freeze, have significantly contributed to the lack of access to the DFEH. Other contributing factors may include the lack of public outreach in recent years, the closure of the early mediation program for employment cases, and an outdated, understaffed and unmanaged Communication Center.

The budget reductions and severe restriction on travel resulted in virtual elimination of the public affairs function, significantly hampering the DFEH's ability to conduct outreach and education. Additionally, in my discussions with private attorneys, I have learned that some plaintiffs' attorneys prefer to file their complaints with the federal Equal Employment Opportunity Commission (EEOC) because of its early mediation program. Furthermore, the DFEH's Communication Center serves as the initial point of contact for potential complainants. Upon my arrival at the DFEH in August 2004, this unit was understaffed and unmanaged. The telephone equipment was obsolete.

A combination of all of these factors has likely impacted the public's access to the DFEH and, consequently, the decline in complaint filings.

We've implemented a number of measures in order to address these concerns. As previously stated, we are opening a satellite intake site at the San Bernardino Senior Citizens Center. We have replaced our Communication Center equipment with state-of-the-art technology, appointed a manager, fully staffed the unit, and recruited and trained volunteer law students to conduct intake. We have also begun an outreach program and media campaign to better inform the public of our services and the laws we enforce. Finally, we have started a volunteer mediation program in Northern California that we plan to expand to other parts of the state.

- 4. *The average caseload for non-housing cases has gone up in the last few years, while the average caseload for housing cases has gone down. Please explain the reasons for these changes in consultant caseloads and the impacts of these changes on the department, complainants and respondents.***

The decrease in the average housing caseload in recent years is due primarily to special funding that the DFEH received from the federal Department of Housing and Urban Development (HUD). In January 2003, HUD awarded DFEH with special funding to create a limited term unit to conduct housing investigations within 100 days of the complaint filing. This funding allowed the DFEH to hire 7 additional investigators on a limited term basis through December 2004. Also, in June 2003, HUD awarded DFEH with special two-year funding to establish an early mediation program. The funding has been used to pay private mediators to mediate complaints prior to the DFEH conducting an investigation. That funding will terminate in June 2005 at the end of the two-year program. The addition of the limited term staff and the referral of cases to private mediators have contributed to the decrease in the average caseload in the housing unit. HUD has not offered any of these types of special incentive programs this year, so we do not expect to receive any additional funds for these or any other programs.

Increases and decreases in caseload directly impact the department's investigative staff and the complainants and respondents. A higher caseload results in longer delays at every stage of the investigative process, and affects the quality of the investigation. A lower caseload results in more expedited and thorough investigations. Within the last several months, in order to more equitably distribute the caseloads, while maintaining compliance with the HUD requirements, employment cases have been transferred to housing investigators.

- 5. *Has the number of initial calls for assistance and the number of intake interviews at district offices gone up or down in the last few years? Please provide any statistical data or anecdotal information on this subject, including the trends in calls and interviews over the last few years if available.***

Unfortunately, I am unable to provide data on the number of calls to the Communication Center, since that data has not been consistently tracked by the department in the past. We have, however, corrected that problem with technology improvements in our Communication Center, and will be able to generate such data in the future. With respect to the number of intake interviews conducted at district offices in employment, the DFEH experienced a significant decrease in 2003/04. The data shows the following:

Fiscal Year	Number of Intake Interviews Conducted in Employment
1999/00	17,709
2000/01	16,441
2001/02	16,374
2002/03	17,459
2003/04	12,906

6. *What actions or policies could be instituted to further expedite and improve the department's processing of discrimination complaints?*

There are a number of changes that could address many of the issues identified by your questions, some of which are already underway.

- Once the hiring freeze ended and I arrived as director in August 2004, we immediately began actively recruiting for and filling as many case processing vacancies as possible, with particular emphasis on Communication Center and district office positions.
- We have recently purchased a state-of-the-art telephone system for the Communication Center that will allow us to monitor and track the calls received through our toll-free number.
- We have also recently opened a satellite intake site in San Bernardino to make our services more accessible to the public in that area. We were able to obtain rent-free space at the San Bernardino Senior Citizens Center and recruit retired annuitants to conduct intake two days per week.
- We have recruited volunteer law students in our Communication Center to assist in conducting intake interviews.
- We are in the process of reinstituting the early mediation program in Northern California by recruiting volunteer mediators and utilizing the administrative law judges at the Fair Employment and Housing

Commission. We are planning to expand that program throughout the state.

- In December 2004, we upgraded all of our desktop computers statewide. With this new technology and additional technical support, we plan to automate the complaint filing process on non-investigated complaints. We also plan to automate the intake appointment system.
- A formalized, comprehensive investigator training program is critical to efficient and effective complaint processing. The investigative staff needs training on the law, analytical framework, theories of discrimination, investigative techniques, evidence, time management, negotiations, interviewing techniques, and report writing.
- An internal audit function that can audit all aspects of the complaint processing system, including the Communication Center, district offices, and legal offices so that management can identify particular problem areas and direct resources or conduct training, if appropriate, to remedy the problem.

I hope that this information is helpful to the committee members, and I look forward to the hearing on May 25, 2005.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Suzanne M. Ambrose', written in dark ink.

SUZANNE M. AMBROSE
Director

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

EMPLOYMENT CASES FILED - COUNT OF BASES*

BASES	99-00	00-01	01-02	02-03	03-04
Race/Color*	4493	4425	4596	4911	3849
National Origin/Ancestry	2431	2221	2624	2621	1942
Religion	485	538	559	562	552
Physical Disability--Hearing	238	215	220	237	178
Physical Disability--Sight	63	79	71	100	77
Physical Disability--Limbs	697	697	879	954	797
Physical Disability--Blood/Circulation	232	253	355	405	476
Physical Disability--Spinal/Back	640	610	738	768	747
Physical Disability--Cerebral/Neural/Muscular	356	354	462	430	373
Physical Disability--Heart	122	110	141	161	164
Physical Disability--Speech/Respiratory	92	86	122	113	111
Physical Disability--AIDS	73	131	93	97	96
Physical Disability--Digestive/Urinary/Reproductive	153	122	168	154	158
Physical Disability--Other	1029	1001	1276	1410	1143
Age (Over 40)	3263	3148	3286	3411	3052
Mental Disability	565	658	791	929	928
Medical Condition - Genetic Characteristics	82	220	163	111	72
Medical Condition - Cancer	734	413	332	265	236
Retaliation--for Filing	993	870	813	608	542
Retaliation--for Protesting	2741	2915	3566	4184	3980
Retaliation--for Participating in DFEH Investigation	50	66	57	57	50
Retaliation--for Protesting Patient Abuse	10	15	11	21	16
Association--Must be used with another basis	211	248	280	251	257
Sex--Other Allegations	2539	2068	2168	2280	1836
Sex--Harassment	4039	4346	4189	4231	3571
Sex--Pregnancy	986	930	1024	1116	883
Sex--Orientation	210	539	609	695	614
Marital Status--Single	137	118	137	143	98
Marital Status--Married	136	121	118	164	118
Marital Status--Divorced	45	30	24	32	46
Marital Status--Cohabitation	52	30	45	46	36
Family Care	587	537	587	679	587
Other ("b" or "c" suffix cases)	246	256	587	1129	1462
TOTAL	28742	28742	31195	33275	29049

*Bases reported exceed the total number of cases filed. Complainants may claim up to four (4) bases. Complainants may not identify themselves in these categories or may consider themselves in more than one.

1. Statement of Goals

Since assuming the position of Director of the Department of General Services (DGS), I have focused considerable energy on the improvement of core operations in order to ensure that our customer departments and local governments are receiving the best services, while ensuring that taxpayer dollars are being spent wisely. In order to achieve this, the DGS has undertaken widespread organizational and management reviews across all departmental operations and is striving to align those operations to leverage maximum efficiency. Moreover, as part of this process, we are adapting available technologies to increase the public's access to State government and to increase information that is made available to State policy makers. These are primarily being accomplished through the availability of improved information systems.

It is my goal as Director to expand upon this platform of increased operational efficiency to assure that the DGS fulfills its commitment to providing efficient centralized services to the State's critical programs. It has been my belief that the services this department provides have an important role that touches the lives of all of California's residents. The degree to which the DGS functions as a partner with other agencies, those agencies can more effectively achieve their service delivery goals. The quality of DGS services will enable programs from healthcare to transportation to education to expand the delivery of their services. This is a responsibility that I take very seriously.

In pursuit of this, the DGS has already taken considerable steps to streamline its services to serve our customers better. This includes the consolidation of some functions and the modernization of others so that the DGS can meet its responsibilities within the confines of its limited resources.

More specifically, I am currently focused on seeing through the following efforts that are already underway:

Develop an Efficient and Accountable DGS

The DGS will continue to review its operations and practices to best meet its own mission and objectives and the expectations of its customers. This can only happen in an environment where we are open to listening to the needs of our customers and the public at large. But, beyond listening, there needs to be a meaningful commitment to follow through on those needs that are reasonable and achievable. The DGS is engaged in the process that will help us succeed in this endeavor through enhanced customer outreach, client forums, customer surveys and the training of our employees to better prepare them for the workplace of the future. This goal, while it may not appear as bold as some others, is perhaps the most fundamentally important because it is central to assuring the inherent organizational quality that is critical if the DGS is to provide first-rate service to the State and local agencies that rely upon it.

Perhaps the most important subset of this goal is in the area of procurement. For a number of years, the Procurement Division of the DGS has been engaged in reform, redesign and restructuring. These have all filled important needs, but have been

layered upon one another in a way that has diminished the division's ability to stabilize and serve as the State's policy leader in procurement. In the coming months, the division will be finalizing its proposal for becoming a strategic organization, better aligned to provide service and policy direction to the many State agencies that it serves.

Promote Sustainable Buildings

The DGS is currently engaged in assuring delivery of the goals envisioned in the Governor's Green Building Executive Order. Fully realized, these goals would deliver to California the most energy efficient, environmentally friendly workplaces in the State's history. The DGS has mobilized the considerable talent found in its Real Estate Services Division and the Division of the State Architect to partner with other State agencies to design new buildings, and retrofit existing structures, that take advantage of cost efficient technologies that reduce our use of fossil fuels and extend our commitment to environmentally preferable products in the construction and operation of State offices. Included in this goal is the assurance that State buildings adhere to accessibility standards that are so important to the public that use these facilities. There is much work that lies ahead in order to achieve the full scope and ambition of this goal, but it is critical that we begin now if we are to leave a legacy of responsible design to future generations.

Expedite the Safe Construction of Schools

The recent approval of school construction bond measures has coincided with a very active construction industry. This has placed an increased importance on the efficient processing of funding applications before the Office of Public School Construction and plan reviews at the Division of the State Architect (DSA) in order to mitigate the impact of construction inflation. However, speed must not get in the way of responsible review if we are to maintain our commitment to equitable funding and the assurance of safe design and construction. To assure the latter, while promoting expeditious review of school plans, the DSA will soon launch the DSA Academy to provide enhanced training to architects and those engaged in plan review in order to ensure consistently high standards are employed in the design and review of plans for our children's schools.

2. Department of Corrections, Youth Authority, State hospitals, developmental centers and California State University clinics. Since 1996, the cost of purchasing these drugs has increased over 350 percent and last year totaled \$187.2 million. The Legislative Analyst's Office report (Lowering the State's Costs for Prescription Drugs, February 2005) made recommendations to DGS purchasing practices that could achieve short-term cost savings to the State. Have you reviewed the LAO report and if so, which recommendations are you implementing?

The department has studied the LAO report carefully, in recognition of the belief that pharmaceuticals are one of the most critical commodity groups that we purchase. Because achieving savings in this category is a high priority for the DGS, we have brought it under the umbrella of the California Strategic Sourcing Initiative, where DGS

staff and consultant resources can be coordinated to achieve our cost containment goals. Following is the status of each LAO recommendation and our comments on each.

Collaboration between state drug purchasers

The DGS has focused on fostering collaboration among the departments that we purchase for, primarily through the efforts of the Common Drug Formulary Committee. The committee is designed to coordinate clinical practice and best purchasing practices in an effort to obtain best prices in the delivery of quality care. This approach has already yielded significant progress in the category of atypical antipsychotics, where the work of the committee has enabled the pursuit of price negotiations based on therapeutic category. In addition, the DGS has recently begun participating with numerous other State agencies in the Common Drug Formulary Committee, which is designed to improve prescribing protocols throughout the system.

Increase DGS staff in order to create more drug contracts

The DGS's ability to negotiate and award contracts is directly tied to the availability of pharmaceutical staff in our client departments, who provide the detailed information about drug utilization that is the basis for negotiation efforts. These staff members' ability to participate is limited, given their heavy workloads associated with dispensing medications and caring for patients. The DGS is currently engaged in the analysis of this recommendation to determine the makeup of staff that can best augment the department's efforts to enhance the use of client data in order to enable increased drug contracting.

Develop an Annual workplan

A workplan was developed through our Strategic Sourcing Initiative. This workplan identified the strategies that will provide the quickest and best approaches to help contain costs while maintaining program quality. The following procurement activities are underway as a result of this workplan:

1. Negotiations of proprietary drugs.
2. Pharmacy Benefits Manager for parolees of the Department of Corrections.
3. A Prime Vendor for pharmaceuticals and medical-related goods.

DGS participation in drug reviews

The DGS believes that this proposal has merit, but has not had the necessary staff to fully address this opportunity. This will be evaluated at the same time as the proposal for increased staff, as addressed above.

California Department of Corrections (CDC) and DGS comparison of potential methods to lower parolee costs

Through our strategic sourcing efforts, the DGS will be releasing a Request for Proposal (RFP) for a Pharmacy Benefits Manager (PBM). This is recognized in the LAO report as an improvement over the current retail dispensing model. The LAO report further recommends that the DGS and the CDC be directed to compare PBM pricing to cost if

the CDC were to dispense drugs directly to parolees. The DGS can assist the CDC with this analysis, but decisions as to whether a direct dispensing model is preferable to other strategies require CDC determination.

3. Savings in pharmaceutical purchases are typically achieved by participating in a “group purchasing organization” (GPO). What are the annual cost savings that DGS achieves by its participation in the “Massachusetts alliance”? During November 2003 through October 2004, only 16 percent (\$28.5 million) of all DGS drug purchases were obtained through this GPO. How would you determine if additional savings could be achieved? How would you determine if greater cost savings could be achieved by joining another group purchasing organization?

The DGS has a multi-tiered approach to pharmaceutical contracting. This approach focuses resources on driving down costs for the most expensive drugs. The GPO contract with Managed Healthcare Associates (MHA) through the Massachusetts Alliance is a supplemental alternative to other DGS contracting efforts. It is used when the DGS cannot secure a more favorable price through direct manufacturer negotiations or through the competitive drug contract. The MHA contract provides access to thousands of drugs that would otherwise be purchased at Wholesale Acquisition Cost or a less favorable discount. Prior to awarding contracts for drug line items, the DGS compares pricing that is received in response to direct manufacturer negotiations or in response to the drug solicitation with that available from MHA to ensure that the best prices are achieved. Our most recent analysis, with data through February 2005, indicates that we save over \$13 million per year below Wholesale Acquisition Cost by our participation in the MHA GPO. It is not believed that additional savings are available through MHA, as this option is already used whenever it offers preferential pricing. Current DGS strategy is to evaluate another GPO (Minnesota) to determine if there are better pricing opportunities available than those found with MHA. The DGS is currently benchmarking Minnesota pricing to conduct this evaluation.

4. What has the department learned so far in the early stages of the strategic sourcing contract with CGI-AMS? What changes, if any, is the department making based on the lessons learned?

Leaders in the private sector adopted strategic sourcing strategies beginning more than a decade ago – and as the methodologies and technology tools have matured, strategic sourcing has become a core strategy of companies from Dell Computers and Motorola to Disney and Hewlett-Packard.

Strategic sourcing is found much less frequently in the public sector. California is a leader among large states in implementing this improved procurement methodology. As such, we have been breaking new ground and much of the implementation has been arduous. It has been necessary to collect and rigorously analyze data that the State had

not previously maintained for any analytical purpose, much less with the needs of strategic sourcing in mind.

More challenges presented themselves to this project as the tools and processes of strategic sourcing needed to be refined in order to make them consistent with the standards that exist in California's public procurement environment. We continually evaluate the lessons that we learn as we proceed with this important project.

We have faced a number of challenges in implementing strategic sourcing. First was the dreadful condition of the State's data. In attempting to compile the kind of purchasing history and inventory records that are essential to strategic sourcing, we repeatedly confronted the absence of any unified data system. This is one of the shortcomings we are now beginning to address because of what we have already learned through strategic sourcing.

While we are preparing plans that will one day enable a statewide purchasing system that houses all purchasing information, there are steps being taken for the interim period. We have instituted a requirement for the suppliers awarded strategically sourced contracts to either 1) provide an Internet accessible purchasing site that the State will use to buy their products, and then provide detailed purchasing information to the DGS on a monthly basis; or 2) provide all necessary product information to the DGS to input into their Internet-based purchasing system. These steps will ensure that the State has the detailed information necessary to conduct thorough analyses that will enable the continuation of strategic sourcing.

Another challenge has been adapting the principles of strategic sourcing to the policy priorities of the State of California. For instance, the State faces unique challenges when attempting to use its volume alone to drive best price, recognizing that it has well-founded commitments to Small Business Enterprises and to Disabled Veteran Business Enterprises (SB/DVBE). To address this issue, the DGS and CGI-AMS have done extensive data analysis to understand the level of SB/DVBE business participation in areas that are being strategically sourced. We then used the outcomes of the analysis and worked with the small business community to determine how their goals would best be met in this environment. In one example of reacting to this community's needs, the DGS developed and regularly conducts partnering workshops to help SB/DVBEs link up with large companies to create partnerships, to mutual benefit.

Finally, the State's strategic sourcing program has learned that it needs to adjust some of the tools that are successfully used in the private sector. Among these is the responsibility to assure that all aspects of the procurement process are open and transparent to the vendor community. These requirements limit the ability of the State to be as flexible as it could be if self interest were its only concern, but are important to the integrity of public agency procurement. The response to Question 5 provides an example of how the State is responding to this lesson.

Another area where the DGS has been required to adjust to the environment of strategic sourcing is of contract management. While the DGS has always had some level of contract management, these contracts require more extensive management techniques than used before to ensure that the contractor adheres to all of the service level agreements, pricing and terms and conditions. The changes instituted to date to address this area include the development of contract management plans for each of the strategically sourced contracts as well as a training manual for contract managers to follow when validating information that will be input in the State's on-line purchasing system.

The strategic sourcing effort has also afforded the DGS an opportunity to use new electronic tools, such as spending cubes for data analysis; automated electronic request for proposal and submission of bids; and reverse auctions. In order to acquire mastery of these tools, a training program has been developed and is in process.

5. In January 2005, CGI-AMS conducted a reverse auction for California Highway Patrol cars. The price paid for these cars was apparently higher than the price the State had paid on its own for an emergency procurement just a few weeks prior to the reverse auction. What, if anything, did the department learn from this reverse auction experience? How is the department responding to these lessons?

It is worth noting that the reverse auction conducted in January 2005 was for two categories of vehicles—Front Wheel Drive used primarily by local law enforcement agencies, and Rear Wheel Drive used primarily by the California Highway Patrol. In each category, the State paid a lower price than it had obtained in previous competitive solicitations, including the one mentioned in the question above.

The reverse auction was conducted by the DGS with our strategic sourcing consultant CGI-AMS. In the Front Wheel Drive category the reverse auction went as planned, lasting two hours and obtaining a substantial price reduction on the Chevrolet Impala. However, in the Rear Wheel Drive category, the auction lasted approximately 12 hours and resulted in a less favorable price than the State had previously obtained for the Ford Crown Victoria. Fortunately, the State had always recognized and stated in the Request for Proposal that it could enter into negotiations under Public Contract Code section 6611 following the reverse auction if conditions warranted. The DGS invoked its right to negotiate with all three bidders, consistent with Public Contract Code section 6611(a)(4) and a standing Administrative Order, and obtained the lowest actual dollar cost for these vehicles since 1998.

Although the solicitation was successful and obtained highly favorable pricing for both vehicles, we naturally wanted to learn from the experience and improve the reverse auction process. In particular, we felt that it placed a considerable burden on bidders that the reverse auction for Rear Wheel Drive vehicles lasted nearly 12 hours. The rules of the auction provided that if there were less than five minutes remaining in the

auction, there would be an automatic five-minute extension if any of the bidders dropped their price by \$10 or more. One bidder took advantage of this provision to generate an extremely large number of five-minute extensions.

Our consultants have advised us that situations such as this are uncommon. When they arise, it is standard in private-sector procurements to send an electronic message to the participants setting a firm ending time, with no possibility of extensions beyond that time. Another action available to the private sector would be to increase the decrement required for an extension from \$10 to a larger amount. However, State procurement law restrained us from using either of these approaches since neither had been specifically authorized by statute or stated in the Request for Proposal. Given these limitations, the only way to remedy the situation was to follow the prescribed sequence of bid, auction, negotiation, and seek additional reductions in the negotiation phase. This strategy was successful, but we have concluded that before proceeding with future auctions of this nature, this experience requires close review so that more explicit controls are in place.

The DGS plans to continue to use reverse auctions selectively in cases where they are likely to yield lower prices. However, we are taking a more critical look at future categories to ensure that there is sufficient competition for a reverse auction to be successful. In the Rear Wheel Drive category, the State was limited to one product by one manufacturer, with the only competition among resellers. In addition, the dealers objected to the use of strategic sourcing practices in this category. This contributed to a situation where competition was not aggressive enough to result in a successful reverse auction. By contrast, the more competitive environment found in the Front Wheel Drive category resulted in a more efficient and highly successful procurement.

The DGS is also including language in future solicitations to avoid conditions that result in reverse auctions running to excessive length. With these changes, we believe reverse auctions will continue to be a useful tool for the State, as they create incentives for vendors to offer their best price.

6. What else is the department doing to improve procurement? What specific steps has the department taken, and what steps does it plan to take, to simplify the procurement process?

The DGS has undergone several changes in the past years from Procurement Reform Recommendation Implementations to the implementation of the California Strategic Sourcing Initiative. It has always strived to improve the procurement process and will continue to do so. Following is a list of our accomplishments to date and our plans for the future.

Recast the Procurement Division as a Strategic Organization

The DGS is currently developing a plan to recast the Procurement Division as a strategic organization that is responsible for conducting enterprise-wide or the highest-risk procurements.

Create an Infrastructure That Will Support the Strategic Organization

The DGS will modernize the State's procurement system through evaluation of, support for and implementation of e-procurement to provide a uniform platform on which the State can base its business processes. The DGS will also expand the California Procurement and Contracting Academy to include Intermediate and Advanced training to ensure California's acquisition staff members have the necessary skills and knowledge. Training for State agency procurement staff will be expanded to include formal procurements and advanced procurement techniques. As a follow-up to this advanced procurement training and the development of comprehensive policies and procedures, the DGS will evaluate the delegation of higher levels of authority to State departments for procurements that are unique to those departments, enabling a closer alliance between program expertise and procurement management. In addition, the DGS will continue the process of reviewing procurement methods to ensure they meet current needs, identifying external best practices that can be used in California and modifying existing procurement methods where opportunities are presented. It will also establish a performance measurement system to promote accountability and provide ongoing feedback to determine whether practices are successful.

Continue Implementation of Strategic Sourcing

The DGS will continue its implementation of strategic sourcing strategies and its commitment to improving their delivery. This modern system will provide a more disciplined procurement model that is capable of providing State agencies the benefit of reduced prices and streamlined procurement processes. This system will also continue the development of agreed-upon statewide standards for products, following a process similar to the recent DGS effort in partnership with the State CIO community that established State standards for IT hardware. It will also provide more rigorous data analysis to provide an empirical foundation for the State's business management practices.

Continued Focus on Meeting Socioeconomic and Environmental Goals

The DGS will continue its efforts to provide opportunities for large businesses to partner with SB/DVBEs to include these important sectors in the marketplace as part of our business planning. It will also continue and expand its efforts to promote the use of Environmentally Preferable Products.

7. What is the status of the contract for phone service provided to CDC inmates and CYA wards? Please give some examples of phone rates for collect calls made by inmates and CYA wards.

The new contract for Inmate-Ward Telephone Service was awarded on Oct. 29, 2004, to the low bidder, MCI. This new, competitively bid contract offers additional savings to inmate friends and families on InterLATA calls (in-state, non-local calls), which are the most common type of calls made using this system. As of April 1, 2005, all locations were transitioned to MCI and the new reduced rate schedule became effective. Based on current volume, these rates will save inmate friends and families approximately \$4 million per year over the previous contract.

This is the second rate reduction in the last three years; the previous contracts were renegotiated in 2002, resulting in an average reduction of 25 percent for CDC calls and 78 percent for CYA calls.

The contract has two different service levels. Service Level 2, which is used principally by the CDC, includes the cost of monitoring and recording equipment (In the table below, this is marked as "CDC."). Service Level 1, which is used principally by the CYA, does not include the cost of monitoring and recording equipment, which makes it more like a conventional collect call for the non-institutionalized population (In the table below, this is marked as "CYA.").

MCI collect call rates from both old and new contract

	Local (IntraLATA) Surcharge Rate/Min		InterLATA Surcharge Rate/Min	Interstate Surcharge Rate/Min
Expired Contract - CDC	\$1.50	\$.15	\$2.00 \$.28	\$3.95 \$.89
Expired Contract - CYA	\$0.50	\$.05	\$0.50 \$.05	\$3.95 \$.89
New Contract - Prison * <i>Effective on 1 Apr 2005</i>	\$1.50	\$.15	\$2.00 \$.22*	\$3.95 \$.89
New Contract - CYA * <i>Effective on 1 Apr 2005</i>	\$0.50	\$.05	\$0.50 \$.05	\$3.95 \$.89

8. Are there any plans to change the technology that is used to bill these calls?

Under the new contract, the technology for monitoring, storing and reviewing calls is being improved, but there is no change in billing technology. The CDC and the CYA will evaluate other options in conjunction with emerging technology (for example, a PIN/debit system where inmates and wards could have accounts that would be debited for calls) to determine if they will be cost effective in future contracts.

9. What is the current commission or surcharge that the State collects from the phone service providers for inmate collect calls? B. How much money did the State make from these commissions in 2004? C. What profit did the company providing the service receive?

A- The new contract has a franchise fee of \$26 million per fiscal year to the General Fund and an additional payment of \$800,000 per fiscal year to DGS-TD for contract management.

B- In fiscal year 2003-2004, the State received \$26 million for the General Fund and \$1 million for DGS-TD administration.

C- The vendor does not disclose its profits for this line of business, and there is no requirement that it do so. Because this is a services contract that was awarded through competitive bidding, the State does not regulate the vendor's profits.

10. Recent press articles reported that the department entered into an "emergency" 90-day contract worth \$161,300 to a private company, ABM Janitorial Services, to clean the new Franchise Tax Board headquarters. Please explain the details of the emergency which precipitated the need for this contract, and why State janitorial services were unavailable?

As a cost-saving measure, the DGS conducted a competitive bid for custodial services at the Franchise Tax Board. As a result of this competitive bid, and in accordance with Government Code Section 19130(a), DGS requested approval by the State Personnel Board (Board) to proceed with a three-year contract with ABM Janitorial Services. This proposed three-year cost savings contract was not executed while the DGS awaited a decision by the Board.

As the Phase III facility neared completion, it became necessary to provide custodial services for the facility. In order to avoid a potential layoff that would result from an approved contract if new staff were hired while awaiting the decision, the DGS proposed a 90-day contract in order to meet the business needs for this facility. The DGS believed this temporary 90-day contract met the criteria set forth in Government Code Section 19130(b)(10) and would allow the DGS to provide custodial services for the new facility pending the decision by the Board. This contract was also appealed to the Board and was not executed. Both contracts have since been rejected by Board staff.

11. SB552 (Burton), Chapter 737, Statutes of 2003, requires the department to compile information and report on the State vehicle fleet including, among other things, the number of alternatively fueled or hybrid cars and SUVs and 4-wheel-drives purchased or leased and the total dollars spent by the State on passenger vehicle purchases and leases.

What lessons can be learned from this year's report for the period ending December 31, 2004?

The DGS found that the ability for State agencies to collect and report data about their fleet assets varies significantly. For some, the use of sophisticated asset management software and dedicated fleet staff makes the task routine; but for those required to comb through files across their department, the task can be overwhelming.

The data being collected through SB 552 puts the DGS closer to being able to make the types of policy decisions that will reduce costs and minimize the environmental impact our fleet has on the State. However, more data are needed to gain a complete picture. The DGS intends to expand the scope of the data being collected in order to gain a higher level of insight into the fleet, particularly with respect to vehicle utilization.

Finally, this first round of fleet data collection efforts underscored the need for the State to deploy additional technology resources to obtain access to fleet data throughout the year when purchasing decisions are being made. The department is currently engaged in establishing a Feasibility Study Report (FSR) for a fleet management system that can be applied statewide.

Are all State offices, agencies, and departments complying with the requirement to report to DGS all State vehicle purchases or leases?

The report required by SB 552 was posted to the DGS Web site after all departments had the opportunity to collect and submit their data. All affected offices, departments and agencies have reported. The University of California, California State University and Community Colleges have not reported.

Based on the DGS report, what, if anything, does the department plan to do to minimize the economic and environmental costs linked with the use of petroleum-based fuels for State transportation?

As stated above, the DGS will expand our request for fleet information and move toward a system that will allow us day-to-day visibility into the State's fleet assets. This should significantly reduce the time it takes to collect, analyze and report fleet information and provide more comprehensive data throughout the year and especially at the time when critical fleet purchasing decisions are being made.

The State of California has met the federal Energy Policy Act (EPAAct) goal of purchasing alternative fuel vehicles to fill 75 percent of its non-law enforcement vehicle needs. An alternative fuel vehicle is capable of running on any fuel other than gasoline or diesel. Natural gas, liquid petroleum gas, ethanol, methanol, biodiesel, hydrogen, and electricity are considered alternative fuels. While the State has met and exceeded its purchase mandates, the program's impact on the State's dependence on foreign petroleum has been limited by the lack of alternative fuel fueling infrastructure. Within

the last year, the DGS has brought online two Compressed Natural Gas (CNG) fueling stations. Collecting and analyzing fuel data, as noted above, will provide needed information to determine if the department should promote more infrastructure development or seek other approaches to advance the State's energy use and environmental goals.

12. The 911 program provides the services and equipment necessary to deliver emergency calls. What are the department's long-term plans for the network?

Over the past 20 years, California's 9-1-1 system has grown to be one of the most complex 9-1-1 networks in the nation, incorporating over 500 Public Safety Answering Points (PSAPs) in 58 counties. As with many issues, the rest of the nation looks to California for leadership and innovation in 9-1-1. The California Wireless Enhanced 9-1-1 Project (E9-1-1) has been recognized by government and industry organizations for the successes it has achieved and for using a statewide approach. Of the approximately 171.2 million wireless subscribers in the U.S., about 15-20 percent are in California. As of year-end 2004, California is processing over 300,000 wireless E9-1-1 calls per month. The department's goal is for 75 percent of wireless cell sectors in California to be capable of processing location information from cellular 9-1-1 callers by December 2005.

To best prepare California for the future, the DGS is planning a next generation E9-1-1 system to take advantage of the capabilities of emerging technologies, such as two-way pagers, VOIP and automatic craft notification systems like On-Star. These new technologies present a host of implementation challenges, but will also make E9-1-1 a much more valuable tool, enabling the automatic transmission of information such as the number of people involved in an auto accident and likely injuries. A telecommunications consulting firm has been retained to perform an assessment of the existing network and make recommendations on a future path. From these recommendations, the DGS will be preparing a Request for Information, followed by a Request for Proposal for modification, enhancement or replacement of the existing network over the next five to seven years.

Rebidding of DGS Master Service Agreements (MSA) for Credit Card Processing Vendors

13. Under DGS' existing MSA with credit card vendors, state agencies and departments pass on the vendor's transaction surcharge to Californians making payments to state agencies using a credit card. Do you agree with that practice? Do you think it would be useful for DGS and other state agencies to assess all of the costs associated with each method of payment and determine whether, in fact, there are cost savings generated from credit card payments that offset the transaction fees charged by the vendor? If so, will you conduct such an assessment?

The existing MSA with credit card vendors does allow State agencies and departments to pass on the vendor's transaction surcharge to cardholders. These agencies are allowed to determine whether it is in the interest of their program to charge the transaction fee to the cardholder. Currently, the majority of State agencies and departments using the MSA do not charge the transaction fee. The DGS has not previously conducted an assessment such as the one suggested because each client agency should make its own assessment based on factors that may be unique to its program.

However, in evaluating the current system in preparation for re-bidding this service, the DGS has convened a workgroup from among more than 25 user departments. It would be possible for the DGS to use this existing group to also look at both the cost and the savings factors that result from credit card acceptance. This could enable the development of a cost-benefit model that helps to determine the savings that justify elimination of any convenience fees that are being charged.

As part of this effort, it would be appropriate to determine the actual savings available to agencies if an appreciable amount of the payment processing and collections workload were alleviated by means of electronic payments. Some studies suggest that elimination of a convenience fee results in a sizeable increase in credit/debit card activity. Other studies indicate that this shift from cash/check payment activity yields a reduction in staff costs, lost interest and payment default. If true, then agencies would be able to anticipate the direct impact on operations and redirect budget resources to the cost of the increased processing fees without negatively impacting program resources. Currently, the prospect of reducing program resources by the amount directed to processing fee payments is a real fear of agencies in these lean budget times, and there has been no direct evidence responsive to that fear. While it is not within the purview of the DGS to direct agencies to levy, or waive, convenience fees, it would be appropriate that it convene the existing working group to research the experience of other public agencies in order to determine how such fees could be waived, with offsetting savings that keep program support levels whole.

14. DGS is in the process of rebidding its statewide contract MSA with several credit card processing vendors this year and is currently developing the criteria that will go into the 2005 request for proposal to seek bids from credit card processing vendors. Will DGS require in its request for proposal specifications regarding the credit card transaction fee the vendor intends to charge? Does DGS intend to permit vendors under the new MSA to charge varying fees to the different state agencies, departments and boards, as is the case under the existing MSA? Will DGS give preference to the vendor or vendors with the lowest transaction fees in choosing which vendors to include in the new MSA? Is DGS considering capping the transaction fee or requiring vendors to agree to one, low fixed transaction fee

As was the case with the current MSA, it is again DGS' intention to include specifications in the RFP that deal with the credit card transaction fee. In the current MSA's, two associations (Discover and American Express) charge flat fees and two associations (VISA and MasterCard) charge variable fees. While the flat fee provides a fixed figure as a transaction fee, this results in the fee typically being higher to hedge fluctuations in the cost of money, the risk of repayment by the cardholder, and the specific business requirements of the government program supported by the payment method. In short, if vendors were required to bid a fixed fee, without knowing how activity between low-risk and high-risk programs might be spread, there is the likelihood that the rate would be higher in order to provide a hedge against unanticipated default rates. This could result in an increase in costs for lower-risk programs, while yielding no actual savings to higher-risk programs. The net effect would likely be an increase in transaction fees to the State as a whole. By allowing a variable fee, the vendor is able to offer and keep the lowest price possible to the participating State agencies and departments. Given industry standards and practices with respect to credit card payment, there is much evidence that suggests that the variable fee is the most cost effective. As with all MSA procurements, DGS will consider all factors that would result in the lowest cost to the State and to the cardholders.

15. Doesn't allowing the vendor to determine what transaction fees it charges undermine the purpose of having an MSA from the standpoint that one of the key goals of having MSA's is to achieve economies of scale and get one low price for the entire state in exchange for the large volume of business the vendor will receive from the MSA?

As stated above, "one low price" may not equate to best price for the State overall. The fact is that vendors price their product in this market on the basis of risk, and different programs bear different risk profiles. Attempting to blend those profiles for purposes of establishing a single rate may result in an increased bid price to account for uncertainty. This MSA, as with all MSAs, will be competitively bid to ensure that, through the competitive process, vendors are motivated to bid their lowest cost in order to obtain a contract for the large volume of business the State will generate. In this particular industry, vendors can bid their lowest transaction fee when they know that variables, such as the cost of money, the risk of fronting money should the cardholder not pay their bill, the type of authorization process used, are understood and can be adjusted for as those variables change. The rates offered to government and terms and conditions within the RFP will result in the most cost effective processes to the State and the most convenient credit card acceptance services to Californians. In addition, the volume of State credit card transactions has significantly increased since the existing contract was bid, so it is anticipated that the State will see reduced transaction fees in response to those volumes when bids are received for the new MSA.

16. Because agencies can simply pass the fee along, they have no incentive to negotiate a lower fee. However, if agencies were precluded from passing a

transaction fee onto customers, wouldn't that give DGS a greater incentive to negotiate a better deal with its vendors?

This is a reasonable view; however, actual experience would seem to counter this belief. DGS review of activity indicates that most State agencies do not charge the transaction fee to the cardholder. For those who do, State agencies are encouraged to, and do, negotiate lower pricing when adjustments can be made based on their specific business needs. DGS will always compete with the intention of contracting for the best quality of service at the lowest reasonable price, achieving what State agencies and departments need to support their programs and business.

17. Do you compile data on how much money people charged on their credit cards when making payments to state agencies in the last calendar or fiscal year?

As part of the process to support bidding the new MSA, DGS compiles dollar volume data for each of the MSA contractors. This base volume data will be used within the RFP as historical usage to support the bidders' ability to propose their lowest possible fees. Additionally, the new RFP will require examples of system and ad hoc reporting capabilities at the agency level and rollup to DGS MSA administration staff.

Data for 2004 shows the following information concerning credit card usage with State agencies:

	Transactions	Total Sales	Average
Visa/Mastercard	5,910,541	\$876,107,049	\$149
American Express	1,366,982	\$248,657,080	\$182
Discover Card	84,313	\$ 12,532,708	\$149
Totals	7,361,836	\$1,137,296,837	\$155

The first of these is the fact that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The second is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The third is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The fourth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The fifth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The sixth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The seventh is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The eighth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The ninth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The tenth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable.



DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR

EXECUTIVE OFFICE

10240 SYSTEMS PARKWAY, SACRAMENTO, CA 95827

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STATEMENT OF GOALS

Principles of Effective Bureau of Automotive Repair Operations

Provide a responsive resource when consumer concerns are identified relating to Automotive Repair Issues.

Provide a responsive resource for business as to what the law requires in their dealing with consumers and within their industry.

Establish or continue best practices in Government Service to the public, industry and within government.

Effectively and efficiently implement the Smog Check Program and Automotive Repair Act consistent with the principles of Bureau of Automotive Repair operations.

Insure fair dealings in all enforcement matters consistent with applicable due process.

Identify and implement economic efficiencies and to strive for the best use of revenues and resources in carrying out Bureau of Automotive Repair's mandates.

CALIFORNIA LEGISLATURE

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GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

April 27, 2005

Vernon Chong, M.D.
1820 Starview Lane
Lincoln, CA 95648

Dear Dr. Chong:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Veterans Board on May 25, 2005. You are not required to appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We would like to receive an updated Form 700, Statement of Economic Interest by May 18th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Following are questions that we would like you to address in writing prior to the hearing. Please respond by May 18th so committee members will have sufficient time to review the material before your confirmation hearing.

Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure on the board?*

Management of the Department

In recent years the department has been criticized and sanctioned by the federal government for the quality of care at the state's veterans' homes. At the same time, California voters and the Legislature authorized the building of additional homes. When these homes open there will be a significantly greater number of facilities available to assist veterans, and the department will increase its management responsibilities.



1. *Given the department's history of significant management problems, what actions can you take as a board member, have you taken, or plan to take to assure the committee that the management problems identified at the existing homes will not be repeated?*
2. *How would you expect to monitor the department's performance during your tenure on the board particularly with respect to the provision of health care at the Barstow home and the Yountville facility?*

Disabled Veteran Business Enterprise Participation Program

In July 2002 the state auditor found that the state struggles to attain the statutory program goals of the Disabled Veteran Business Enterprise Participation Program.

1. *In what ways does the department monitor compliance with or enforcement of the goals of the Disabled Veteran Business Enterprise program? What actions can the department take to improve participation?*

Potential for Fraud


In November 2002 the state auditor reported that the department's billing systems created a potential for fraud. For example, the auditor found one doctor who claimed to perform 2,614 patient visits in a two-year period and concluded that 69 percent (or 1,792) of these visits were never made. The same doctor claimed to have made four hundred visits on days the doctor did not work. One hundred and forty-eight additional visits were claimed to have been made on days the "doctor worked from home."

1. *Can you use your position on the board to monitor the potential for fraud? If so, how will you do it? Is staff available to assist you?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA, 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:JD:dc

May 18, 2005

The Honorable Don Perata
California State Senate
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata,

Thank you for the privilege and honor to be considered for confirmation of an appointment to the California Veterans Board. My responses to your questions are as follows:

Statement of Goals:

I served thirty-one years on active duty in the United States Air Force as a physician and had the privilege to serve in many clinical and senior leadership roles in providing health care services to military members and their families. Following retirement from active duty, I served for 8 years with the U.S. Department of Veterans Affairs in senior leadership roles in the provision of health care and other services to veterans. I have been committed to serving veterans and those who serve this country for more than 39 years and have been a strong advocate for the continuance of veterans' benefits. During my tenure on the California Veterans Board, (I have already been serving for one year) it has been my goal to be an advocate for veterans by ensuring that the policies of the Board and of the Department of Veterans Affairs are in support of veterans and their benefits as provided by law. I want to ensure that policies are not only in keeping with the law but also fair to the veteran. It is my intent to ensure that appeals by veterans based on denial of services or benefits by the Department are reviewed and heard appropriately and fairly. It is also my intent to ensure that the Board works in a collegial and cooperative manner with the Department to improve services to the veteran. There is also much to be done to improve the function and value of the Veterans Board.

Management of the Department:

1. It is my opinion that there has been a marked improvement in the overall management of the Department with the appointment of a new Secretary of Veterans Affairs and the appointments of the Under Secretary and of the Deputy Secretary for Homes during the past year. This improvement in management and leadership has been reflected in the performance at the veterans' homes. An interim Director for the Barstow home was selected and subsequently appointed. Improvement in the management of that home has been reflected in the satisfaction of the residents of the home. I have personally visited all three of the homes and have spoken to many members of the staff and the residents. I received many unsolicited laudatory comments about the management and leadership of the Secretary, Under Secretary and Deputy Secretary for Homes. Other members of the Board have also visited the

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homes. The relationship of the Directors of the homes and with the Deputy Secretary for Homes and the Secretary is reportedly much improved from the previous administration. The Board holds meetings at the homes on a regular basis and members of the Board have been making individual visits. In addition, many of the representatives of the veterans' service organizations that attend the Board meetings have made comments about the improvements they have seen in the relationship of the Secretary and the Under Secretary with veterans and veterans groups.

2. The Department's performance can be monitored by periodic visits by the members of the Board as well as by the satisfaction surveys conducted at the homes. As you are aware, the U.S. Department of Veterans Affairs and the California Department of Health Services provide regular inspections of the health care services provided by the homes. The results of these inspections are provided to the Department who in turn provides them to the Board. In addition, the Secretary has provided regular reports to the Board on the status of the homes. As previously stated, visits have been made by the Board and its members and will be continued to be made at all of the homes, to include Barstow and Yountville.

Disabled Veterans Business Enterprise Participation Program:

The Department of Veterans Affairs has two individuals specifically assigned to monitor and review copies of reports of participation of all State departments. Their responsibility is for the outreach to the Disabled Veterans Business Enterprise Participation Program (DVBE) contractors and the education of other State departments to improve participation in the DVBE participation program. These two advocates gather information on the best practices from the reports and utilize these best practices to assist other departments in improving their participation in the program. The Department should continue to stress this outreach and education program.

Potential for Fraud:

The Board can require that the Department provide information on possible or actual fraud. The potential for fraud will always exist when it comes to people and money. The Board establishes policies for the operation of the Department, but does not provide operational guidance for the conduct of business. The billing system that is utilized should be designed to minimize the potential for fraud. Internal monitoring systems need to be in place to detect the possibility of fraud. The Board does not have the expertise or staff to monitor for the potential of fraud. It is my understanding that the issue of a physician having claimed to have made 400 visits on days the doctor did not work is related to the standard way that Medicare does its coding of visits. Ancillary health care personnel such as therapists will use the same codes but with suffixes or categorizers to the codes. These visits reflect their visits and not that of the doctor.

The Board is provided with copies of internal and external audits and reviews by the Department.

The Board may have the responsibility for oversight of the operations of the Department, but does not have the expertise or staff to provide an oversight or monitoring function.

I hope that the responses to your questions provide the information that you are seeking. Again, thank you for your time and effort in the confirmation process.

Sincerely,

Vernon Chong, M.D.
1820 Starview Lane
Lincoln, CA 95648-8484
(916) 408-0306

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MAY 16 2005

May 16, 2005

Ms Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, California 95814

Dear Ms Sabelhaus:

I have received Chairman Perata's letter of April 27, 2005, informing me that the confirmation hearing on my appointment as a member of the California Veterans Board is set for 1:30 p.m. on May 25, 2005, in Room 113 of the State Capitol. As he requested, I am directing my responses to his questions to you.

Statement of Goals

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure on the board?*

My overall goal is to be an active and contributing participant in the Board's important functions of determining policies for all operations of the Department of Veterans Affairs and hearing appeals by veterans from decisions of the department.

More specifically, I will help the Board identify the need for policies to assist the Department in fulfilling its mission and improving its operations, to adopt those policies, and to monitor the Department to assure that the policies are followed. I would also hope to help in developing a better understanding between the Board and the Department as to their respective roles and relationship.

The Board needs an independent counsel to advise it on its important policy making responsibilities and to assist the Board in hearing and deciding appeals by veterans from decisions of the Department. Although I am a fiscal conservative, I believe that there is a real need for such a position and, as Chair of the Board's Budget Committee, I am working to obtain a modest increase (\$ 40,120.00) in the Board's budget for a part-time special counsel position to assure that the Board's policy and appellate decisions are in accord with law and fair and reasonable to all parties.

(See the Endnote at the end of this letter.)

Management of the Department

2. *Given the department's history of significant management problems, what actions can you take as a board member, have you taken, or plan to take to assure the committee that the management problems identified at the existing homes will not be repeated?*
3. *How would you expect to monitor the department's performance during your tenure on the board particularly with respect to the provision of health care at the Barstow home and the Yountville facility?*

Under existing law the Board's primary role is to "determine the policies for all operations of the Department." (See Military and Veterans Code Section 72.) In such a role, it is difficult for a part-time citizen Board with only one full-time employee to become involved in day-to-day administrative and management activities. During my brief tenure thus far, I have concentrated on viewing past inspection reports and having the Department provide answers to questions on whether items have or have not been closed out. When practical I ask that they show me that the item or items have been taken care of or closed out.

Under current law, the Board has authority to require the Secretary of Veterans Affairs to present reports and recommendations to the Board on any matter relating to veterans' welfare. (See Military and Veterans Code Section 84.) I would expect the Board to monitor the Department's performance in all programs, including its performance in providing health care at the Barstow, Chula Vista, and Yountville homes, by exercising that authority to the fullest extent possible. In addition, to the extent that performance problems can be addressed effectively through the Board's policy-making power, I would expect the Board to exercise that power as well. The Governor, Senate and Assembly should hold the Secretary of Department Of Veterans Affairs and California Veterans Board fully accountable and if we do not do the job required, and then terminate all concerned.

(Also, see the Endnote at the end of this letter.)

4. *In what ways does the department monitor compliance with or enforcement of the goals of the Disabled Veteran Business Enterprise program? What actions can the department take to improve participation?*

Existing law does not confer any direct authority on the Board over the Disabled Veteran Business Enterprise program. The only authority conferred upon the Department is to appoint an "advocate" to "oversee, promote, and coordinate efforts to facilitate implementation" of the program, to "disseminate information," and to coordinate generally. (See Military and Veterans Code Section 999.11.) I am not familiar in detail with the program therefore I currently do not know what

actions are possible or that they are taking any actions. Since receiving this question, I have asked for some answers and will continue to stay on top of this until I receive further information.

1. Can you use your position on the Board to monitor the potential for fraud? If so, how will you do it? Is staff available to assist you?

As I understand this question, it results primarily from an incident referred to in a November 2002 State Auditor report involving a doctor (presumably a contract physician at one of the veterans' homes) who was found to have submitted false billings.

I have not seen that particular report, but I will make an effort to get it and read it. In any case, I would think that the Board could monitor the potential for this sort of thing by exercising its authority to require reports and recommendations from the Secretary as mentioned in my response to Questions 2 and 3, above, to include requiring the Secretary to provide the Board with copies of any and all such audits or reports.

Except for its full-time "Executive Officer" position, the only staff the Board has to assist it in all its operations is whatever staff the Board may be able to "beg, borrow, or steal" from the Department from time to time. In 1999, the Office of Inspector General was created by statute to replace the administratively created position of Internal Auditor within the Department (see Military and Veterans Code Section 73.5), but it is my understanding that there may be plans to repeal the statute or that the office may not be funded. I personally feel this is a big mistake; I was the Inspector General (IG) for the Sacramento Air Logistical Center from September 1986 to July 1988. The IG office would give the Secretary one place to keep track of all inspections and audits as well as follow up on all actions until the matters were closed out or completed.

Endnote:

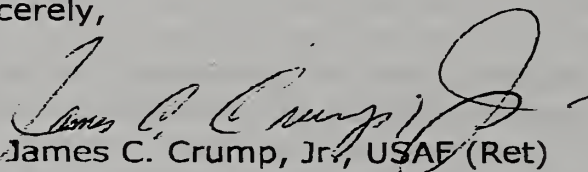
I have read and studied carefully the State Auditor's Report on the California Veterans Board dated June 2003, Report No. 2002-120. The report makes sense to me, and another of my goals is to work actively with the other Board members to implement its recommendations.

Finally, one of the things I have learned during my brief tenure thus far is that there have been some misunderstandings (perhaps even friction) over the years as to the nature of the relationship between the Board and the Department, and that these misunderstandings may be caused, at least in part, by the simple one-sentence statute creating the Board. Military and Veterans Code Section 64 says quite simply: "There shall be in the Department of Veterans Affairs the California Veterans Board." (Underlining added for emphasis.)

I am told that there are no judicial decisions interpreting this statute, and it seems that no one has ever really known what it means. I am also told that there have been some department directors and secretaries who have interpreted this statute to mean that the Board is subordinate to the Department and subject to their control and direction. Until recently, the Board's budget has not been separately stated, but merely included somewhere in the Department's budget. (See now Military and Veterans Code Section 69.7.)

Yet, when one reads all the statutes dealing with the Board, it seems clear that the Board is not "in the Department" as a subordinate entity. Nevertheless, amending Section 64 to read could eliminate much of this misunderstanding and friction: "There shall be in state government the California Veterans Board." (Underlining added for emphasis.) This simple amendment would be consistent with and supportive of the entire statutory scheme for the Board, and would eliminate any doubt that may remain as to the special role of the Board and its separate and independent relationship with the Department.

Sincerely,



Col. James C. Crump, Jr., USAF (Ret)

P.S.

The previous submitted Form 700, Statement of Economic Interest is still current.

CALIFORNIA VETERAN BOARD

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CalVetBoard@cdva.ca.gov



May 17, 2005

The Honorable Don Perata
California State Senate
Chair, Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Senator Perata:

Thank you for the opportunity to respond to the questions contained in your letter dated April 27, 2005, relative to the confirmation hearing on my appointment as a Member of the California Veterans Board. I will respond in the order the questions were asked.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure on the Board?

As a veteran, a Board member and a resident of the Veterans Home of California - Barstow, my primary goal is to adequately represent the interests of all veterans residing in California as the Board fulfills its policymaking role. Secondly, I hope to ensure that the concerns of veterans' home residents are represented on the Board, where the policy made directly affects their everyday lives. During my tenure on the Board, I hope to assist in rebuilding the reputation of the Department in general, and the Barstow home in particular.

Management of the Department

1. Given the Department's history of significant management problems, what actions can you take as a Board member, have you taken, or plan to take to assure the committee that the management problems identified at the existing homes will not be repeated?

I am hopeful that the Department's management problems are a thing of the past. It appears to me that the current administration is doing its best to move forward in providing the best medical care and management possible. Everything I have seen so far leads me to this conclusion. The Department Secretary, the Deputy Secretary for Veterans Homes and the Homes' Administrators all have extensive experience in health care. Having said this, I intend to "hold their feet to the fire" to make sure they provide the Board with all necessary information so the Board can make informed decisions to properly carry out our policymaking role.

VETERANS FIRST

Senator Don Perata

May 17, 2005

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2. How would you expect to monitor the department's performance during your tenure on the board particularly with respect to the provision of health care at the Barstow home and the Yountville facility?

As a board member and resident of the Veterans Home of California-Barstow, I am extremely interested in the provision of health care. The Department's performance in this area is periodically subject to inspection by the U.S. Department of Veterans Affairs and the California Department of Health Services. I expect the Department Secretary to fully brief the Board on the results of these inspections and to faithfully implement satisfactory plans of correction, whenever necessary.

Disabled Veterans Business Enterprise Participation Program

1. In what ways does the department monitor compliance with or enforcement of the goals of the Disabled Veterans Business Enterprise Program? What actions can the department take to improve participation?

It is my understanding that the Department's statewide DVBE advocate receives copies of reports filed by other contracting state agencies on the DVBE participation goals and that it is the responsibility of the individual agencies to ensure compliance and enforcement. The CDVA advocate is responsible for advocating for DVBE contractors and for outreach to potential DVBE contractors. The Department can improve participation by making sure that each of its contract officers and the folks who purchase goods and services for the State pay attention to the participation goals and take the DVBE program seriously, without just making a half-hearted effort to comply. It should be an honor to use DVBE contractors; it should not be treated as an inconvenience.

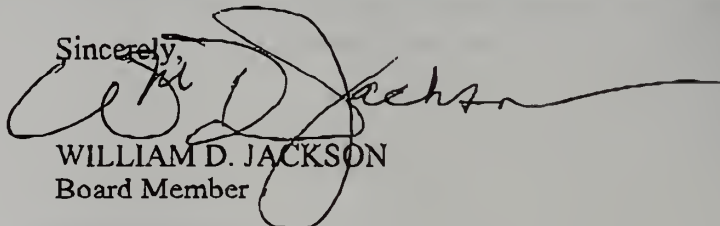
Potential for Fraud

1. Can you use your position on the board to monitor the potential for fraud? If so, how will you do it? Is staff available to assist you?

Hopefully, fraudulent activity is rare within the Department. However, the California Military and Veterans Code Section 86 states that the Board is responsible for hearing the appeals of any person deeming himself or herself a veteran. The Board also listens to public comment at its monthly meetings and we receive letters of complaint from time to time. The Board is also given copies of various internal and external audits for review. The Department makes staff available to brief the board on these audits and we can ask them to appear at Board meetings, if necessary. In addition, employees and veterans can report suspected fraudulent activities to the Bureau of State Audits.

If any further information is required, you may contact me at (760) 252-6218.

Sincerely,



WILLIAM D. JACKSON
Board Member

VETERANS FIRST

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SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 8, 2005
2:33 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3
4
5
6 HEARING

7
8
9
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13
14
15
16 WEDNESDAY, JUNE 8, 2005

17 2:33 P.M.

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23
24 Reported by:

25
26 Evelyn J. Mizak
27 Shorthand Reporter
28



APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

ALSO PRESENT

MATTHEW L. CATE, Inspector General
Youth and Adult Correctional Agency

SENATOR GLORIA ROMERO

ARTHUR H. ROSENFELD, Member
State Energy Resources Conservation and
Development Commission

SENATOR CHRISTINE KEHOE



1 SHERYL CARTER

Natural Resources Defense Council

2 Constellation Energy

Planning and Conservation League

3 Oak Creek Energy

California Solar Energy Industry Association

4 Quantum Consulting

5 Distributed Energy Resources Group

PV Manufacturers Association

6 Princeton Development Corporation

Renewable Northwest Project

7 Sustainable Conservation

enXco

8 Itron

9 BILL MAGAVERN

10 Sierra Club California

11 DAN KALB

Union of Concerned Scientists

13 MARY ANN WARMERDAM, Director

Pesticide Regulation

14 SENATOR MIKE MACHADO

15 JACK GUALDO

16 Agriculture Council of California

17 California Association of Wine Grape Growers

California Association of Pest Control Advisors

18 California Council for Environmental Economic Balance

19 WES CARR, Treasurer

California Association of Professional Scientists

21 PETE PRICE

California League of Conservation Voters

22 Community Alliance with Family Farmers

23 ERIN FIELD

Western Growers

25 MIKE FALASCO

Wine Institute

26 JONATHAN KAPLAN, Director

27 Sustainable Agriculture Project

28 Natural Resources Defense Council



1 RANDELE KANOUSE
East Bay Municipal Utility District

2 LAURIE NELSON
3 Consumers Specialty Products Association
4 Clorox Company

5 WILLIAM W. SEMMES, Director
California Conservation Corps

6 ARNOLDO TORRES
7 Torres Policy Consultants

8 CHRIS GREEN
9 Corps Member

10 ERIC RODRIGUEZ
Corps Member

11 MARK COVELLA, Director
12 Ukiah Center
13 California Conservation Corps

14 MEL KREB, Chief Deputy Director
California Conservation Corps

15 DAVID BOONE, Retired
16 Former Deputy Director
17 California Conservation Corps

18 SCOTT WOLSEY, Central District Director
California Conservation Corps

19

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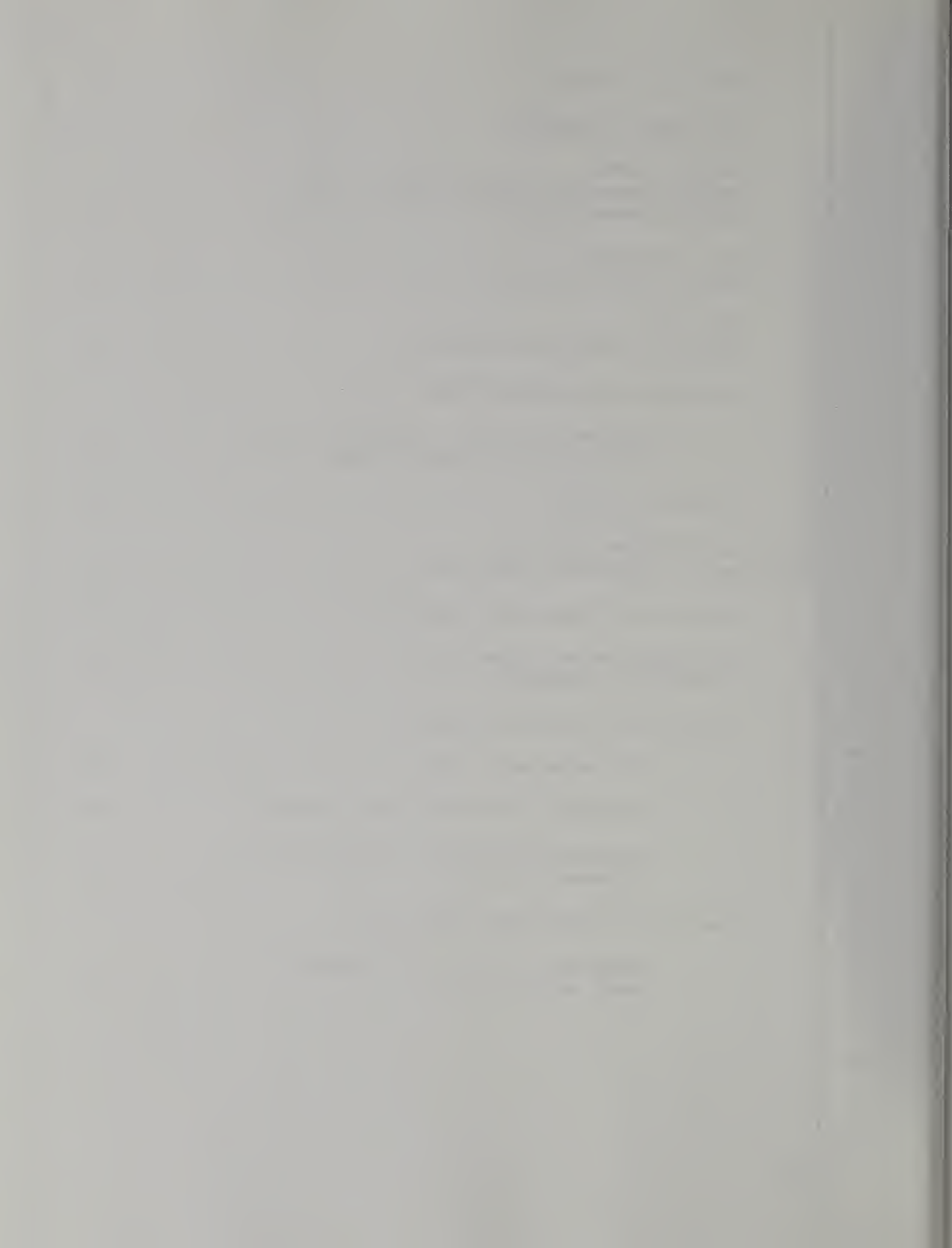
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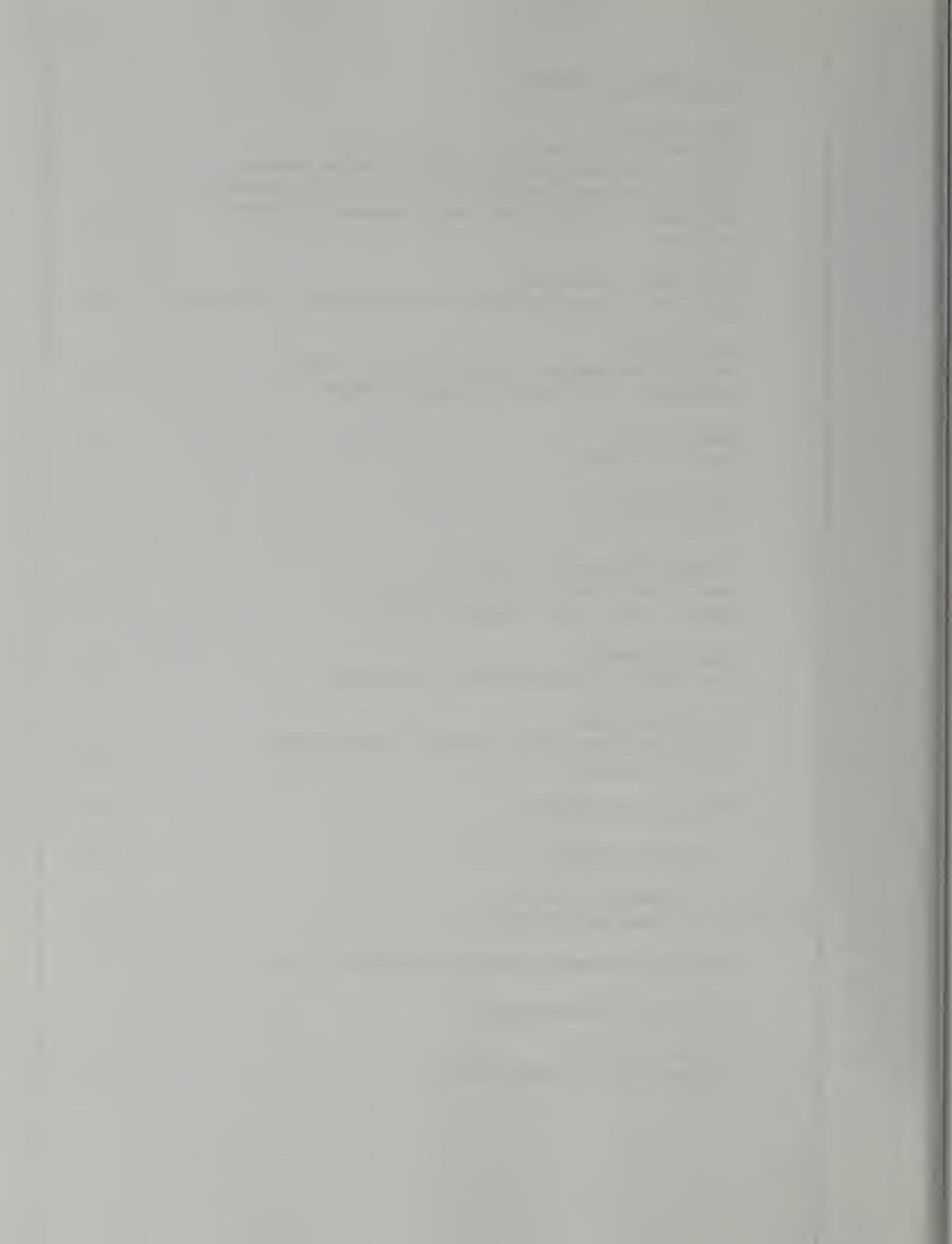
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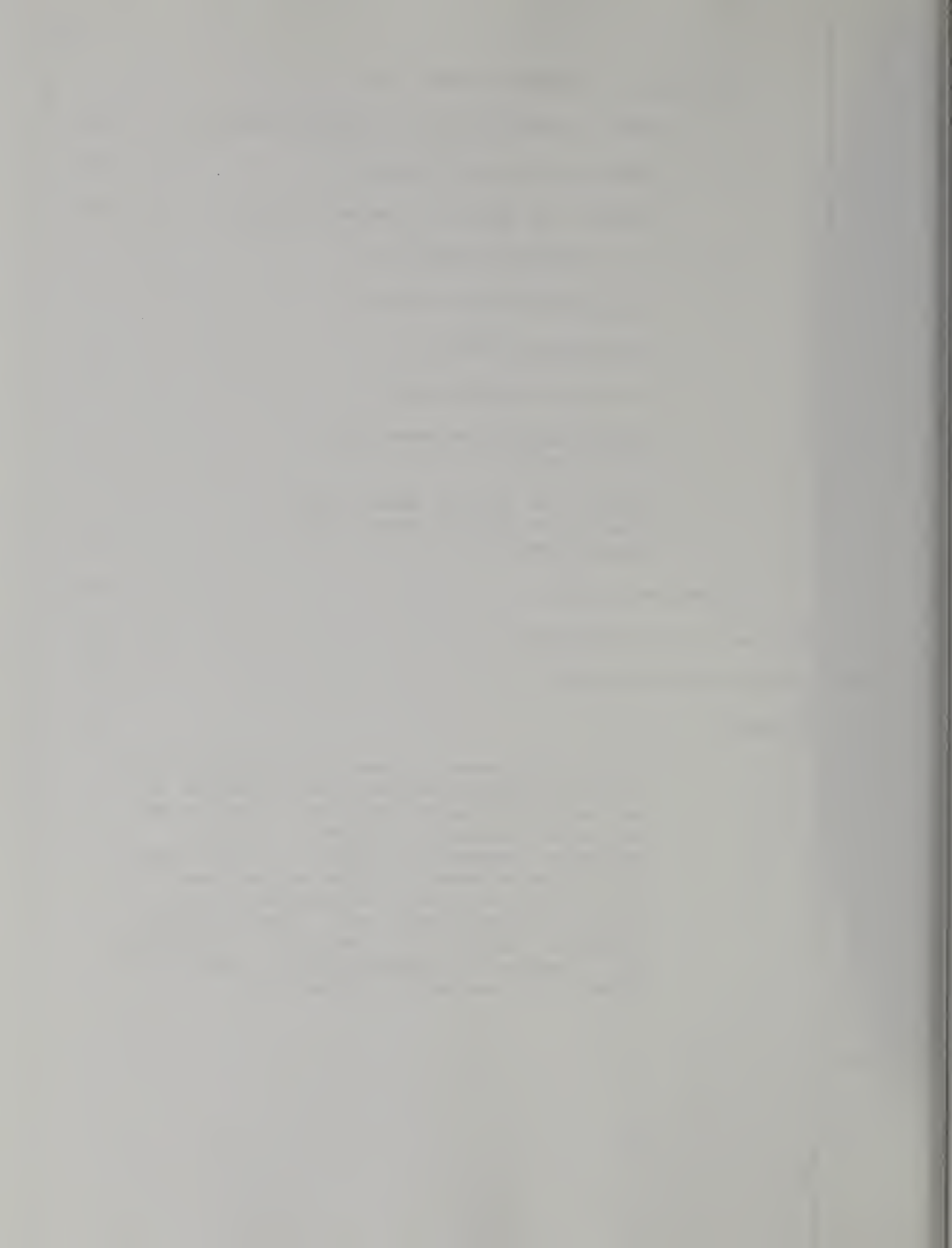
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Written Responses to Committee Questions from Governor's Appointees Required to Appear, as Well as the following Members of Boating and Waterways Commission: LENORA S. CLARK, CHARLES P. JOHNSON, and HENRY P. PURDON; and The following Members of the Medical Board of California, Division of Medical Quality: CESAR A. ARISTEIGUIETA, M.D., HEDY L. CHANG, STEPHEN R. CORDAY, M.D., SHELTON J. DURUISSEAU, Ph.D., MARTIN R. GREENBERG, Ph.D., LAURIE C. GREGG, M.D., and MARY L. MORAN, M.D.



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Senate Rules Committee will convene.

We are going to take out of order the Governor's appointees. We have Senator Romero here who's going to introduce Matthew Cate, Inspector General, Youth and Adult Correctional Agency.

SENATOR ROMERO: Good afternoon. Thank you so very much.

This is very special, and I think I wanted to make sure that I could come to bring to the Committee once again our Inspector General for the Youth and Adult Correctional Agency, Matthew Cate. It's my honor to be able to introduce him and to urge that he be reconfirmed in this position.

Members, as you know, it is the position of the Inspector General to really be the eyes and ears of the public in an institution that otherwise has been shut down, has been closed to the public in general. So, he bears a very weighty and tremendous responsibility to be able to report to us in the Legislature and to the public overall what is occurring inside our state prisons.

We spend \$7 billion. You know the issues. We've moved forward on reforms. This Inspector General has done a tremendous job. He did bring forth the audit of the California Youth Authority. He did release again just a couple weeks ago another rather scathing review of the California Youth Authority facility of Chad. He did move very expeditiously to do the

1 investigation into the death of Officer Gonzalez. And he's done
2 all of these quite thoroughly.

3 I would question though, and I would urge you in
4 your questioning, to ask him about the investigation into the
5 Provencio case as well.

6 When Mr. Cate stepped forward originally, I asked
7 him the question about backbone. He said at that point, you
8 might recall this, he said, "You know, the first year or two I
9 won't need the backbone, but it's maybe a little bit later on
10 when I do the reports, and I still find out that the system
11 hasn't changed, that's when I'm going to need backbone to be
12 able to come to you and to say this thing is still broken and
13 we've got to fix it. And I'm going to say it in a fearless way
14 whether you appointed me or not."

15 I believe that Matthew Cate has backbone. I
16 think he has integrity, and he has, I think, the ability to help
17 lead us out of the system that we know is very troubled.

18 So, it's my honor recommend Matt Cate for this
19 position, and with that, please do your questioning.

20 CHAIRMAN PERATA: Thank you, Ms. Leader.
21 Appreciate that.

22 SENATOR ROMERO: I'm going to leave you on your
23 own. I'm getting back to Health Committee.

24 MR. CATE: Thank you, Senator Romero. If only I
25 could live up to that introduction.

26 Thank you, Mr. Chairman and Members, for giving
27 me this opportunity. It's been 10 months since I appeared
28 before this Committee. At that time I really brought forward

1 four promises as far as what our goals would be at the Inspector
2 General's Office. And those are:

3 To rigorously audit the California prison system
4 and to investigate all wrong doing.

5 To bring transparency to our prison system and to
6 the Youth and Adult Correctional Agency.

7 To attempt to collaborate with our correctional
8 administration and with outside stakeholders to find the best
9 possible solutions to our problems.

10 And finally, to hold people accountable to fix
11 the problems we've already found.

12 I'm very proud at the success that we've had at
13 the Inspector General's Office in this regard during the last 10
14 months. And I owe that primarily to the dedicated men and women
15 who work for me at that office. They've done a terrific job.

16 I would like to highlight in just a minute or so
17 some of what I think of where our best work has been this year.

18 The audits that Senator Romero brought forward,
19 we're very proud of those audits and investigations. I would
20 note especially the audit of the California Youth Authority
21 which brought forward the problems we've had with education, and
22 with counseling services, and with safety issues.

23 The same would go true with the investigation
24 into the untimely death of Officer Gonzalez concerning officer
25 safety issues and concerns with management at that institution.

26 Next in the area of transparency, I think for the
27 first time the public really has an open view into our prison
28 system. I'm very proud of that. I think that's hard in the

1 short run for correctional administrators. For the first time
2 we really know what's happening. But in the long term, I think
3 it's good for California, as we can track our progress.

4 Third, I think that we've done a good job of
5 collaborating with everyone we can to try to find best
6 solutions. We have to be careful in this area not to demand a
7 particular solution of one over the other because I've got to
8 audit these later and do an objective job with that. But we
9 have moved the debate forward.

10 And finally, I think that we've done a good job
11 in holding CYA, CDC, Board of Prison Terms, YACA in general,
12 accountable to fixing the problems that we've already
13 identified, or at least letting the public know when they
14 haven't.

15 For all these things, again, I want to publicly
16 thank my staff and the Deputy Inspectors General, and the staff
17 at the OIG's office who work very hard in difficult conditions
18 in the institutions to do this work. And I owe them a debt of
19 gratitude.

20 I'd also, if appropriate at this time, like to
21 identify my family.

22 CHAIRMAN PERATA: Please do.

23 MR. CATE: Thank you.

24 I brought my wife, Rachel, my Mom, Nita, and my
25 sister, Rhonda, are here and my biggest and sometimes only fan
26 base in this job. So, thank you very much.

27 I'm available, of course, to answer any questions
28 that you have.

1 CHAIRMAN PERATA: That's a hell of a burden to
2 put on the family.

3 When you were Linfield, it's a small school;
4 right?

5 MR. CATE: Yes.

6 CHAIRMAN PERATA: Frazier Sparrow?

7 MR. CATE: Football star?

8 CHAIRMAN PERATA: Yeah, Bubba. I taught him
9 everything he knew.

10 [Laughter.]

11 CHAIRMAN PERATA: Okay, so much for that.

12 Anybody else want to go down Memory Lane before
13 we start? Debra?

14 SENATOR BOWEN: I have no questions.

15 CHAIRMAN PERATA: Anybody else?

16 SENATOR BATTIN: I will move acceptance of the
17 nomination.

18 CHAIRMAN PERATA: I have a couple of brief
19 questions.

20 One of the debates over YACA and the re-org was
21 this Committee relinquishing its jurisdiction over warden
22 confirmations. Now you're going to vet them, and just briefly,
23 how would you go about that? You couldn't do any worse job than
24 we do, but how would you go about that?

25 MR. CATE: Well, we've taken a couple steps
26 already. One is, we put together a formula for that process,
27 which will include what I call the cop's side of it, where we go
28 back, and we do background checks, grab personnel files, look at

1 the complete history of the individual.

2 Then the part I think that this body was very
3 good at, which was to go and ask questions, look around, try to
4 talk to the people that have worked with the man or woman who's
5 up for the warden position, hear from the Family Council, hear
6 from the Men's Advisory Council, those kind of groups to try to
7 get a sense of whether the candidate is appropriate in the eyes
8 of the people that they'll serve.

9 And then finally is a portion I hope to add,
10 which is my own -- the information that I get in my office,
11 which, we get between 3,500 and 5,000 letters a year, almost all
12 of them complaints. So, we categorize those. We keep track of
13 them.

14 SENATOR BOWEN: You get more than we do.

15 MR. CATE: They keep us very busy.

16 And so, hopefully, we can do some intelligence
17 work on this individual and bring that to this process that
18 hasn't been there before, to bring out literally the best and
19 the worst that we can find, and then make a decision about the
20 person's competency that way.

21 CHAIRMAN PERATA: I notice you have an unlisted
22 office address.

23 MR. CATE: I inherited that. I'll be happy to
24 give anyone directions who wants to come. We're literally
25 impossible to find because we're tucked away so far in Natomas.

26 But, I'm happy to give anyone directions.

27 CHAIRMAN PERATA: One final question. You're
28 doing an audit now of the Board of Prison Terms?

1 MR. CATE: Correct.

2 CHAIRMAN PERATA: What is that going to address
3 basically? What are you looking at?

4 MR. CATE: It's an accountability audit, which
5 means we're going back to look at our audit of 2000 and our
6 audit of 2003, where we looked at what's called commonly the
7 lifer hearings. One of the issues is, when we first conducted
8 that audit, we found they were about 1500 lifer hearings behind.
9 And so, we've gone back to check on that backlog.

10 And also, we found they had a really difficult
11 time. At that time they were manually keeping track of these.
12 And we suggested that they automate that system. And so, we're
13 going back to check on whether they have the ability to really
14 manage it now through automation.

15 On the other side, we're looking at the parole
16 revocation process. Again, they were having a difficult time
17 managing their staff. I think at that time they had asked for
18 24 additional deputy commissioners. And our original audit said
19 not only don't you need 24 more, you could do with about 24
20 less. And so, we had some really strong criticisms concerning
21 management techniques, and we've gone back to look at those
22 again, to see if that's being hand led appropriately.

23 And I probably should wait to give the results
24 when the audit's completed at the end of the month, but I think
25 we'll -- you'll see, we've thoroughly addressed those issues.

26 CHAIRMAN PERATA: Thank you.

27 Anyone here in support, other than the family?
28 We'll stipulate that the family's generally in support.

1 Anybody here in opposition?

2 Seeing none, we have a motion. Please call the
3 roll.

4 SECRETARY WEBB: Ashburn.

5 SENATOR ASHBURN: Aye.

6 SECRETARY WEBB: Ashburn Aye. Bowen.

7 SENATOR BOWEN: Aye.

8 SECRETARY WEBB: Bowen Aye. Cedillo.

9 SENATOR CEDILLO: Aye.

10 SECRETARY WEBB: Cedillo Aye. Battin.

11 SENATOR BATTIN: Aye.

12 SECRETARY WEBB: Battin Aye. Perata.

13 CHAIRMAN PERATA: Aye.

14 SECRETARY WEBB: Perata Aye. Five to zero.

15 CHAIRMAN PERATA: Congratulations.

16 MR. CATE: Thank you, sir.

17 CHAIRMAN PERATA: Senator Kehoe, please come up
18 with Mr. Rosenfeld, who is a member of the State Energy
19 Resources Conservation and Development Commission.

20 Senator, welcome.

21 SENATOR KEHOE: Thank you, Mr. President and
22 Members.

23 I'm honored to be introducing Dr. Arthur
24 Rosenfeld and encourage you to confirm his reappointment to the
25 California Energy Commission.

26 Dr. Rosenfeld is a co-founder and was the
27 director of the Center for Building Science at the Lawrence-
28 Berkeley Laboratory from 1975 to 1974 [sic]. And under

1 Commissioner Rosenfeld's directorship, ground work for the
2 creation of compact fluorescent lamps, energy efficient windows,
3 and design programs for energy efficient buildings were created.
4 And all of this work was a significant part of California's
5 energy savings over the last 30 years.

6 I have had the pleasure of working with
7 Dr. Rosenfeld on some energy bills this session, and it's been a
8 pleasure to work with him. His depth of knowledge on energy
9 efficiency is amazing.

10 His awards -- you have them all in front of
11 you -- his education, and the many ground-breaking works he's
12 participated in and directed at the Lawrence-Berkeley Lab and
13 other places lead me to strongly encourage you to reconfirm him.
14 I'm delighted to introduce him.

15 CHAIRMAN PERATA: Thank you, Senator.

16 Doctor, welcome.

17 DR. ROSENFELD: Good afternoon, Senators. It's a
18 pleasure to be here.

19 I don't have a formal opening statement. I will
20 state my three major interests, or as some people say, my three
21 obsessions.

22 I'm, as Senator Kehoe said, I've devoted part of
23 my career to developing energy efficient technologies, such as
24 compact fluorescent lamps, many of which are now in play, but
25 there's a lot more to be done continuously. So, my first
26 interest is developing more energy efficient technologies.

27 My second interest is building standards and
28 appliance standards, and working with the Public Utilities

1 Commission on energy efficient programs. That is, getting these
2 new hardwares into the market.

3 My third interest, provoked somewhat by the
4 electricity crisis, is to move the state in the direction of
5 price-responsive -- price response to electricity. That is,
6 electricity is cheap and readily available most of the time, but
7 like one percent of the time it's expensive, and congested, and
8 it costs you a lot of money.

9 With the PUC, I've been working very hard, and I
10 think PG&E is going to announce next week that they will start
11 installing what are called interval meters, which keep track of
12 electricity every hour of the year. And the price of
13 electricity will be high one percent of real time, like ten
14 afternoons a year, and that should flatten out what we call the
15 load duration curve allow, us not to have to build power plants,
16 which only work one percent of the time and cost us a lot of
17 money all the time. That's my third committee activity.

18 I'm happy to invite questions, hopefully on those
19 things I know something about.

20 CHAIRMAN PERATA: Thank you. Those are three
21 things that I know nothing about, so I will yield to Senator
22 Bowen.

23 [Laughter.]

24 SENATOR BOWEN: Those are a few things I know
25 more about than I ever imagined I would know anything about.

26 Good afternoon.

27 DR. ROSENFELD: Good afternoon, Debra.

28 SENATOR BOWEN: If we could just have a permanent

1 Energy Commission spot for you, I would be happy.

2 Can you talk a little bit about, I think this was
3 a question asked, just a little bit about the state's efforts at
4 getting to a place in the markets where we don't have to
5 continue to subsidize either new types of generation or new
6 kinds of more efficient uses, whatever, whether it be tires,
7 bulbs, insulation, washers, all that.

8 How do we get there?

9 DR. ROSENFELD: I hope I'm not going to let you
10 down, but from a societal point of view, there seem to be --
11 there seems to be an awful lot of equipment where the consumer
12 should be willing to pay an extra dollar, save on his
13 electricity bill, and get his money back in five years.

14 And in the United States, most consumers just
15 don't do that. So, the Energy Efficiency Programs, which the
16 PUC runs, are pretty much based on the idea that people will
17 purchase equipment where you get your money back in three years
18 or less.

19 On the other hand, that's not a good deal for
20 society, where we would much sooner get our money back in six or
21 seven years and not pay it off on a power plant for forty years.

22 I think the utilities are pretty well tuned up to
23 know how much subsidy it takes. And the bottom line really is
24 that these programs are enormously cost effective to society.
25 The general rule of thumb is that we take one percent of our
26 electricity bill, and we put it into these programs, and we
27 knock one percent a year off of our growth. Which means, you
28 invest a dollar, society saves a dollar a year. It's pretty

1 darn good for the California economy, but we do -- we do charge
2 you an extra dollar on your utility bill. I think that's a
3 pretty good system.

4 So, I don't see us moving out of that arrangement
5 for a long time.

6 SENATOR BOWEN: Are we doing a good enough job at
7 helping people understand what the pay back period is, and how
8 they might benefit in the long run?

9 We did a great job during energy crisis.

10 DR. ROSENFELD: Nothing helps like an energy
11 crisis.

12 SENATOR BOWEN: But helping people understand the
13 peak, and it really was in part the media campaign, the radio
14 and tv campaign.

15 Could we do much better with that dollar we're
16 investing if we did a little better educational effort?

17 DR. ROSENFELD: Yes. I think we can.

18 Commissioner Pfannenstiel and I are both on the
19 Energy Efficiency Committee. And Commissioner Pfannenstiel, in
20 general, one of her favorite phrases is that we are not doing a
21 good enough job.

22 And we have moved in the direction of putting
23 more money into the Flex Your Power Campaign, which is supposed
24 to do radio and tv spots and work with large houses, Wal-Mart,
25 Target and so forth and so on, to give a lot more space in
26 advertising to energy efficiency.

27 And some of these gains have been pretty
28 permanent. In the years before the energy crisis, compact

1 fluorescent lamps were only, I think, 4 percent of the market.
2 During the crisis they zoomed up to 14 percent of the market,
3 but they're holding at 10 percent of the market. And since
4 these bulbs last six times as long as a regular bulb, that means
5 that something like 50 percent of our lighting now is coming
6 from compact fluorescent lamps in homes and offices with
7 enormous savings.

8 So yeah, we should be doing more.

9 SENATOR BOWEN: You might not be surprised to
10 hear that I'm one of those people who, when they check into a
11 hotel room, immediately looks to see what kind of light bulbs
12 there are. I'm sure you do same thing.

13 DR. ROSENFELD: I'm going to add a phrase to
14 that.

15 One of the nice things that the Energy Commission
16 has developed and will soon -- and is all ready in 4,000 hotel
17 rooms, is just the common idea of a night light. The Energy
18 Commission sponsored research which showed that something like
19 50 percent of the electricity bill in a hotel room is because
20 the hotels don't provide night lights in the United States.
21 People turn on the light in the bathroom, crack the door so it's
22 not too bright, and leave the lights burning all the time.

23 We have now developed a whole new set-up for
24 rooms, for bathrooms, which have night lights and also occupancy
25 sensors, and we're going to save like 30 percent of the light in
26 all hotel rooms in California, starting in '08.

27 SENATOR BOWEN: See, this is why I love this man.

28 [Laughter.]

1 SENATOR BOWEN: I mean, how simple is that?

2 It does occur to me that with regard to the tv
3 and advertising campaign, that none of us who are sitting here
4 and were elected could expect to have been successful in our
5 campaigns without some efforts to communicate to people, and yet
6 we expect to run energy efficiency campaigns, and educate people
7 about peaks usage without talking to them about it except in
8 that little thing they get in their utility bill, that only
9 people like you and me read.

10 DR. ROSENFELD: I think this problem's going to
11 be with us for a while, but we certainly have to work harder.

12 SENATOR BOWEN: How are we doing on efficiency
13 standards for equipment, which I think the public knows
14 efficiency standards primarily through their understanding of
15 the vehicle mileage regulations, which of course we don't have
16 in California, but we do have standards for air conditioners,
17 and washers, refrigerators, and a number of things.

18 How are we doing, in your view, on those?

19 DR. ROSENFELD: I believe that we're doing
20 wonderfully well. We update the building and appliance
21 standards every three years. We have -- since the energy crisis
22 and since I started working with the PUC on the administration
23 of energy efficiency funds, we have urged the utilities to put
24 more money into helping the Energy Commission with codes and
25 standards research.

26 The last set of standards, which became effective
27 in 2001, will, by the time -- if we give them 10 years, because
28 refrigerators don't wear out every day -- if we give them 10

1 years, the bill savings in California after they first decayed
2 will be \$3 billion a year, which is 10 percent of our
3 electricity bill.

4 Now, in fact, the bookkeeping is tricky because
5 the standards won't run for 10 years. They will be replaced in
6 three years with even tougher standards. So, the bookkeeping
7 becomes slightly tricky.

8 But I think I will summarize with my favorite
9 statistic, which is in my answer to Senator Perata's questions,
10 somehow or other, this whole system works so well that in
11 California, since 1976, when the Energy Commission got started
12 and the first standards came out, we have kept electricity use
13 per capita constant since 1976, is 30 years.

14 The United States, which has access to the same
15 technology but didn't enforce standards and didn't ever pass
16 federal building standards, has gone up 50 percent. If you take
17 out California and New York, which have serious programs, the
18 United States has gone up 70 percent.

19 We have thus avoided, by our own policies here,
20 have avoided building more than another 50 percent of our total
21 state's supply of electricity. The annual savings to date
22 amount to more than \$1,000 per family per year, and the
23 environmental impacts are equivalent to getting 15 million cars
24 off the road in California.

25 So, we think we're doing pretty well.

26 SENATOR BOWEN: Thank you for your service.

27 DR. ROSENFELD: Thank you, Senator Bowen.

28 CHAIRMAN PERATA: When I check into the hotel, I

1 look for the honor bars.

2 [Laughter.]

3 CHAIRMAN PERATA: Any further questions.

4 We'll take a motion.

5 SENATOR BOWEN: I'll move.

6 CHAIRMAN PERATA: We have an enthusiastic motion
7 to approve. Please call the roll.

8 SECRETARY WEBB: Bowen.

9 SENATOR BOWEN: Aye.

10 SECRETARY WEBB: Bowen Aye. Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye.

13 CHAIRMAN PERATA: Do you have your family here?

14 DR. ROSENFELD: My wife had a date in Berkeley,
15 and so she authorized me to appear here all alone.

16 [Laughter.]

17 CHAIRMAN PERATA: She had a date in Berkeley?

18 [Laughter.]

19 CHAIRMAN PERATA: You're a broad-minded man.

20 DR. ROSENFELD: I misspoke.

21 CHAIRMAN PERATA: You misspoke and I misfired.

22 Is there anybody here who'd like to speak on
23 behalf of the nominee?

24 MS. CARTER: Thank you, Mr. Chair, Members of
25 the Committee.

26 I'm Sheryl Carter with the Natural Resources
27 Defense Council.

28 Dr. Rosenfeld is one of America's greatest

1 scientists and innovators. And in fact, he's an international
2 symbol of excellence in energy efficiency. NRDC
3 enthusiastically supports his confirmation here today.

4 And in the interest of efficiency, as Dr.
5 Rosenfeld has taught us so well, I'm also here representing more
6 than 15 other groups. So if I could just list the other groups
7 that I'm representing today --

8 DR. ROSENFELD: Think of all the gasoline we've
9 saved.

10 [Laughter.]

11 MS. CARTER: Exactly.

12 I am also here representing the Planning and
13 Conservation League, Oak Creek Energy, California Solar Energy
14 Industry Association, Quantum Consulting, Constellation Energy.
15 And I don't -- oh yes, I do see him in the room; I'll let him
16 speak for himself. Distribution Energy Resources Group, the PV
17 Manufacturers Association, Princeton Development Corporation,
18 Renewable Northwest Project, Sustainable Conservation, enXco,
19 and Itron. These are a list of a combination of environmental,
20 energy efficiency, and renewable technology businesses.

21 CHAIRMAN PERATA: Thank you. Would you spell
22 those, please?

23 MS. CARTER: I'll leave it here.

24 CHAIRMAN PERATA: Thank you.

25 Next.

26 MR. MAGAVERN: Good afternoon. I'm Bill
27 Magavern with Sierra Club California.

28 We enthusiastically support the confirmation of

1 Dr. Rosenfeld. He's a real treasure. California's very lucky
2 to have such an expert and such a leader on the Energy
3 Commission.

4 I rode my bike, so no gasoline was wasted.

5 CHAIRMAN PERATA: Thank you.

6 MR. KALB: Dan Kalb, representing the Union of
7 Concerned Scientists.

8 We also strongly support the reconfirmation of
9 Dr. Rosenfeld. He really has been, as you've heard already, an
10 innovator, not just someone who attends meetings and adds his
11 two cents in, but really takes a proactive approach in energy
12 efficiency and conservation areas. We should be very proud to
13 have him on our Commission.

14 Thank you.

15 CHAIRMAN PERATA: We are indeed.

16 SENATOR BOWEN: Senator Perata, I think it's
17 worth noting that part of Dr. Rosenfeld's gift is that he's able
18 to explain these complex ideas in ways that are not only
19 understandable, but that don't make you feel stupid if you don't
20 know a lot about energy. And the importance of that, I think,
21 is easy to over look, but without being able to understand the
22 difference that white roofs or refrigerator standards make, we
23 can't make those things happen, and work, and save a thousand
24 dollars a year per family.

25 CHAIRMAN PERATA: Point taken.

26 You must have been a wonderful professor. I
27 understood every word you said, and that's really good.

28 Anyone else?

1 Anyone have the audacity to want to come up and
2 oppose this?

3 [Laughter.]

4 CHAIRMAN PERATA: Good judgment having been
5 rendered, we're going to keep this on call, sir, until we get
6 the other three Members back.

7 If you'd like to stay around and wait for that,
8 it's fine, but I can assure you, you're in good hands.

9 Now we're losing everybody.

10 DR. ROSENFELD: Thank you.

11 CHAIRMAN PERATA: My pleasure. Thank you.

12 [Thereafter, SENATORS ASHBURN,
13 BATTIN and CEDILLO added their
14 Aye votes, making the final vote
15 5-0 for confirmation.]

16 CHAIRMAN PERATA: Mary Ann Warmerdam, would you
17 like to come up and talk to me?

18 MS. WARMERDAM: I'd be delighted, Senator.

19 CHAIRMAN PERATA: You may open.

20 MS. WARMERDAM: Thank you, Senator.

21 First of all, I want to thank you and the Members
22 in absencia for the opportunity to meet with you here today.

23 I'd like to start on a bit of a personal note.
24 My parents immigrated to this country some 50 years ago, and I
25 think they're a bit befuddled by the fact that I'm sitting here
26 before you today with the honor of representing the Department
27 of Pesticide Regulation as the Director. It's a cutting edge
28 department, and it has the premier program in the United States

1 if not the world.

2 In that vein, I also understand that we can
3 always strive to do better, and that's my intent. So, I have
4 spent the last seven months of my assignment with the department
5 going up and down the state, meeting with different interest
6 groups, environmental representatives, farmers, farmworkers,
7 community activists.

8 I've also met with some of the folks in Earlimart
9 who were affected by a drift incident not too long ago, a couple
10 of years ago. They were fearful for the health and well being
11 of their children, and I appreciate and understand that.

12 CHAIRMAN PERATA: Senator Machado is here.

13 I apologize, Senator. You were going to
14 introduce her.

15 SENATOR MACHADO: Is it still appropriate?

16 CHAIRMAN PERATA: It's still appropriate.

17 SENATOR MACHADO: Thank you, Mr. Chair and
18 Members.

19 It gives me a great pleasure to introduce Mary
20 Ann Warmerdam. I've known her for about two decades.

21 MS. WARMERDAM: Oh!

22 [Laughter.]

23 CHAIRMAN PERATA: Bad start, Mike.

24 [Laughter.]

25 SENATOR MACHADO: And I think she's probably one
26 of the most qualified candidates that I have seen come forward
27 for the position of Director, Department of Pesticide
28 Regulations.

1 She brings a great deal of integrity, and
2 something I find oftentimes rare in someone that's in charge of
3 administrating an agency that has many responsibilities, a great
4 deal of objectivity. She is familiar with the agriculture
5 industry, which is what is regulated on her purviews, but she
6 also has the understanding and cognizance of the importance of
7 the agency's role in ensuring the safety of workers and the
8 general public in the use of pesticides and other economic
9 tools, of the chemicals used by the agriculture industry and
10 beyond.

11 There are many problems within the agency that
12 are challenging in terms of enforcement, in terms of information
13 that's needed to be able to properly, adequately assess
14 proposals that the industry makes, both from the chemical side
15 and from the user side. And also there's a need to coordinate
16 the various risk assessment functions between those that are
17 used within the agricultural industry and those that are applied
18 to the public at large.

19 In my years of knowing Mary Ann, she has
20 demonstrated time and time again the objectivity, the analytical
21 ability, and a great deal of integrity to take a variety of
22 issues, a variety of viewpoints, and work for the best interests
23 of the constituents she's in charge of, and that is the public
24 in the State of California.

25 So it gives me a great deal of pleasure to
26 introduce her and endorse her candidacy for this position.

27 CHAIRMAN PERATA: Thank you.

28 Any questions of the Senator?

1 Well, do you want to just quit while you're
2 ahead?

3 MS. WARMERDAM: Yes, sir.

4 [Laughter.]

5 CHAIRMAN PERATA: Now, are your mom and dad
6 here?

7 MS. WARMERDAM: No, I'm afraid they couldn't make
8 it this week. They had a vacation they elected to continue to
9 take.

10 CHAIRMAN PERATA: Good judgment.
11 Just for the record, she's not in trouble coming
12 before us, in case they don't understand that.

13 MS. WARMERDAM: I think they were a bit
14 concerned.

15 CHAIRMAN PERATA: Well, we can send you a
16 handwritten note.

17 MS. WARMERDAM: Thank you, Senator. I appreciate
18 that.

19 CHAIRMAN PERATA: Any questions for the nominee?
20 Senator Bowen.

21 SENATOR BOWEN: I think I only have one question,
22 and it has to do with risk assessment.

23 First of all, the list of pesticides of which the
24 department has not yet completed a risk assessment, what the
25 plan is? And then the concern that has been expressed to you
26 about the conflict of interest, the potential for conflict of
27 interest?

28 If you could address those two questions, I would

1 be quite happy.

2 MS. WARMERDAM: Thank you, Senator. I'd be happy
3 to do that.

4 With respect to our obligations under the Toxic
5 Air Contaminant Act, what we have done over the course of the
6 last few years is identified those priority materials that pose
7 a potential of the greatest effect on human health. And we have
8 submitted those priorities for risk assessment.

9 And I understand that there have been some
10 criticisms in the past with respect to our willingness to bring
11 these materials forward. I can only tell you what I will commit
12 to doing for my tenure with the department.

13 We are prepared to bring three additional
14 materials for consideration under the Toxic Air Contaminant Act
15 within the year. And I fully expect we'll have an additional
16 five -- four to five within the next two years for consideration
17 as tax.

18 With respect to risk assessment itself,
19 scientific observers have differences of opinion in terms of how
20 risk assessments should be functionally separated within an
21 organization. The model we happen to follow at DPR is one that
22 is consistent with the federal EPA. It has been peer reviewed
23 by the National Academy of Sciences.

24 But I understand that there is a great deal of
25 interest in further discussion. And Senator, we'd be happy to
26 assess whether the protocols we have in place are indeed the
27 correct ones.

28 SENATOR BOWEN: How does DPR minimize the

1 potential for conflicts at this time?

2 MS. WARMERDAM: At this point in time, we have,
3 if you'll allow me to characterize it as such, a fire wall. The
4 risk assessment is done internally by our toxicologists. We
5 peer review with OEHHA before it comes into the DPR management
6 structure for a risk management decision.

7 The risk management and the risk mitigation
8 decisions are separate and apart from the risk assessment
9 functions that our toxicologists play.

10 SENATOR BOWEN: All right, thank you.

11 MS. WARMERDAM: Thank you, Senator.

12 CHAIRMAN PERATA: Further questions?

13 I have a question about the Scientific Review
14 Panel on Toxic Air.

15 MS. WARMERDAM: Yes.

16 CHAIRMAN PERATA: Your department makes referrals
17 to them?

18 MS. WARMERDAM: Yes. We have an affirmative
19 obligation to bring materials that show characteristics as toxic
20 air contaminants before the Scientific Review Panel.

21 CHAIRMAN PERATA: The history of the department
22 shows that there's only been four referrals made.

23 MS. WARMERDAM: Our history has been the subject
24 of some criticism, Senator. I'll let history judge in the end
25 whether that's fair or not.

26 I fully intend to fulfill our obligation to meet
27 air quality standards within the State of California, whether it
28 be through the Toxic Air Contaminant Act in presenting materials

1 to the Scientific Review Panel, or, as we did within the last
2 couple of weeks, we notified the registrant community, the
3 pesticide manufacturers, if you will, of our intent to re-assess
4 their formulations with respect to VOC standards. And if they
5 cannot meet a decrease in VOC standards in the State of
6 California, we're prepared not to authorize the use of their
7 material any longer. So, we take that concern very seriously.

8 CHAIRMAN PERATA: Anybody here who'd like to
9 speak in support of the nominee, come forward.

10 SENATOR BOWEN: Senator Perata, I do think we
11 need to question this nominee's judgment in accepting this,
12 after having watched any number of mill tax bills go through the
13 Legislature.

14 [Laughter.]

15 MS. WARMERDAM: Duly noted, Senator.

16 MR. GUALCO: Mr. Chairman and Members, Jack
17 Gualco.

18 I'm pleased to be here on behalf of the
19 Agricultural Council of California, the California Association
20 of Wine Grape Growers, the California Association of Pest
21 Control Advisors, and the California Council for Environmental
22 Economic Balance, and wish to associate those organizations'
23 support with the comments made by Senator Machado.

24 I've had the pleasure of knowing and working
25 with, and sometimes against, Mary Ann over the years. She is a
26 woman of complete resolve, but she's also got an incredible
27 ability to pull disparate groups together. And with an agency
28 like the Department of Pesticide Regulation, those two skills

1 are absolutely important in meeting the test of that department.

2 So, we are enthusiastically recommending her
3 confirmation to you. Thank you.

4 CHAIRMAN PERATA: Thank you.

5 MR. CARR: Good afternoon, Mr. Chairman, Members
6 of the Committee.

7 My name is Wes Carr, and I'm the Treasurer for
8 the California Association of Professional Scientists. We
9 represent the state's scientists in government service.

10 I'm also an associate toxicologist in the
11 Department of Pesticide Regulation. During Director Warmerdam's
12 tenure here, we have found her to be knowledgeable, accessible,
13 and creative in her approach to problem solving. And we think
14 that she's demonstrated an excellent job already, and we would
15 strongly urge her confirmation.

16 Thank you.

17 CHAIRMAN PERATA: Thank you.

18 MR. PRICE: Mr. Chairman, Members, Pete Price,
19 representing the California League of Conservation Voters and
20 the Community Alliance with Family Farmers.

21 I'm happy to be here today to support Ms.
22 Warmerdam's confirmation to be the Director of DPR. I'll just
23 mention two things that we've been impressed with since she took
24 on the job last fall.

25 She has gone out of her way to meet, and to go
26 around the state to do so, to meet with a number of
27 environmental groups, environmental justice, and public health
28 groups to hear their concerns, and there are some concerns. But

1 we are confident we can work with her on those issues.

2 She also has been a vocal advocate for promoting
3 sustainable agricultural practices that can help farmers in cost
4 effective way for them to reduce pesticide use, which would
5 benefit all of us.

6 So, we look forward to continued work with her
7 and urge your support.

8 Thank you.

9 CHAIRMAN PERATA: Thank you.

10 MS. FIELD: Thank you. Erin Field on behalf of
11 Western Growers here today in support of the confirmation of
12 Ms. Warmerdam.

13 CHAIRMAN PERATA: Thank you.

14 MR. FALASCO: Mike Falasco with Wine Institute.

15 We, too, associate ourselves with the comments
16 made by Senator Machado and others. Mary Ann Warmerdam will be
17 -- is and will continue to be a very objective, hard working,
18 forthright Director of the Department of Pesticide Regulation.

19 We urge your support and her confirmation.

20 CHAIRMAN PERATA: Thank you.

21 MR. KAPLAN: Thank you. My name is Jonathan
22 Kaplan. I'm Director of the Sustainable Agriculture Project at
23 the Natural Resources Defense Council.

24 We're pleased to support Mary Ann's confirmation
25 today. We are very optimistic about her commitment to promote
26 pesticide alternatives, least toxic alternatives, in
27 California, and look forward to working with her to achieve
28 that.

1 CHAIRMAN PERATA: Thank you.

2 MR. KANOUSE: Mr. Chairman, Committee Members,
3 Randy Kanouse, East Bay Municipal Utility District.

4 I've represented East Bay MUD for 15 years.
5 Prior to that I represented the State Water Resources Control
6 Board during the Jerry Brown administration and the Deukmejian
7 administration for 10 years.

8 And I've worked with Mary Ann for most of those
9 25 years, sometimes on the same side as an ally, sometimes as an
10 adversary.

11 She started, I think, when she was twelve.

12 And over those years, I have found Mary Ann to
13 always be a person of great character, of great integrity, who
14 deals honestly and fairly with interests.

15 I'm here to support her confirmation.

16 CHAIRMAN PERATA: Thank you.

17 MS. NELSON: Mr. Chair and Members, Laurie
18 Nelson on behalf of the Consumers Specialty Products Association
19 and the Clorox Company.

20 I just wanted to remind the Committee that we do
21 represent about half of the products that Mary Ann will be
22 responsible for regulating, and we are here in strong support of
23 her confirmation.

24 Thank you.

25 CHAIRMAN PERATA: It's a good idea to be here.

26 [Laughter.]

27 CHAIRMAN PERATA: Anybody in opposition?

28 Seeing none, you may close.

1 MS. WARMERDAM: Thank you, Senators.

2 SENATOR BATTIN: Move her confirmation.

3 CHAIRMAN PERATA: We have a motion to approve.

4 Call the roll, please.

5 SECRETARY WEBB: Bowen.

6 SENATOR BOWEN: Aye.

7 SECRETARY WEBB: Bowen Aye. Cedillo.

8 SENATOR CEDILLO: Aye.

9 SECRETARY WEBB: Cedillo Aye. Battin.

10 SENATOR BATTIN: Aye.

11 SECRETARY WEBB: Battin Aye. Perata.

12 CHAIRMAN PERATA: Aye.

13 SECRETARY WEBB: Perata Aye. Four to zero.

14 CHAIRMAN PERATA: It's four to zero. We'll leave
15 the roll open so it'll be five-zero by the time you leave.

16 Thanks so much for being here. Congratulations.

17 MS. WARMERDAM: Thank you.

18 [Thereafter, SENATOR ASHBURN
19 added his Aye vote, making the
20 final vote 5-0 for confirmation.]

21 CHAIRMAN PERATA: And our final appointee
22 appearing today is William Semmes, Director of the California
23 Conservation Corps.

24 Welcome.

25 MR. SEMMES: Good afternoon, Mr. Chairman, and
26 Members of the Committee also. Thank you very much for allowing
27 me to appear today to discuss my confirmation.

28 I understand there's some opposition to my

1 confirmation, so I'd just like to address those with you in my
2 opening statement because I think a lot of the concerns that
3 have been raised by the opposition are quite valid.

4 I think the first one that has been raised that I
5 saw immediately when I arrived at this agency in September was
6 the organizational structure at headquarters. So, I set about
7 to immediately change that. And we made the effort to allow
8 field staff to have direct management roles.

9 And I took the most well respected senior field
10 commander and made him Chief Deputy Director. And it's the
11 first time that a field commander has had leadership role in the
12 organization since 1976. I think that has sent a very clear
13 signal to the organization that the program is going to be
14 focused on the Corps members, not about issues in headquarters.
15 I feel confident that he's going to continue to help us square
16 away the organization.

17 We worked very hard to protect field staff
18 positions, and we were able to reopen the Ukiah Residential
19 Center, which is something I'm very proud of, and Senator
20 Chesbro was extremely instrumental in making that happen. And
21 in so doing, we were able to save about 25 field jobs that were
22 going to be eliminated in a layoff plan that I halted.

23 Another key thing that we did was restore Corps
24 member health benefits. That's something that had been cut in
25 previous years, and I felt very strongly about reinstating.

26 We have improved recruitment and retention, and
27 we're also working hard to expand educational opportunities. We
28 recently signed an MOU with one of our contract schools to

1 increase the amount of time that Corps members will spend in the
2 classroom. I'm very proud of a two-week boot camp pilot that we
3 recently conducted at our Greenwood Center, where we had a
4 program that was twice as long and three times harder than the
5 regular one-week boot camp that they go through, yet there were
6 far fewer dropouts. And it's something that I'd like to see all
7 Corps members go through. We don't have the funding for it yet,
8 but it's something I want to work to make happen.

9 While many Corps members have access to jobs
10 skills training, like firefighting and environmental
11 restoration, not all do. I want to dedicate my time at the CCC
12 to making sure that Corps members do have access to good job
13 skills training and the opportunities to go on and do productive
14 things after their time in the CCC.

15 I'm also very happy about the establishment of a
16 pre-apprenticeship program that we're working on with Caltrans
17 right now so Corps members can go straight into a Caltrans
18 apprenticeship program after their time in the CCC, which is a
19 very positive development.

20 And we've also received some important funds from
21 the Employment Development Department for some fuel hazard
22 reduction training, work in the Tahoe Basin. And I look forward
23 to, hopefully, getting some more of those good federal dollars
24 into the CCC as we move forward.

25 We're also working to increase federal agency
26 partnerships. We've had hundreds of Corps members hired by the
27 U.S. Forest Service and the Park Service in the last number of
28 years, and we'd like to see more and more of those partnerships

1 happen, and use more and more federal funds to do environmental
2 restoration work in the state.

3 We actually just received an additional \$600,000
4 from the U.S. Forest Service to do trail work up and down the
5 state, and another \$200,000 from the National Oceanic and
6 Atmospheric Administration to do fishery restoration. So, I'm
7 pushing to do more and more of that.

8 This year, I think, will be an important year for
9 the CCC because it's recovering from years of cuts, and we're
10 looking like we're going to be static in our funding for this
11 next year, so we'll be able to stabilize. This year also we
12 will -- we will see the 100,000th Corps member come through the
13 CCC and earn the title Corps member, which I think is pretty
14 exciting.

15 So, thank you very much, sir.

16 CHAIRMAN PERATA: Thank you.

17 Questions?

18 SENATOR BATTIN: I have no questions.

19 CHAIRMAN PERATA: Senator Cedillo?

20 SENATOR CEDILLO: No.

21 CHAIRMAN PERATA: How come you don't sound like a
22 Cajun if you went to Tulane?

23 MR. SEMMES: Louisiana, that's my mother's side.
24 I've worked hard for years to stop saying, "ya'll." I didn't
25 want to come up and say, "Senators and ya'll."

26 CHAIRMAN PERATA: Your mom, is she here?

27 MR. SEMMES: No, sir, unfortunately. Thankfully,
28 she's not.

1 CHAIRMAN PERATA: Anybody here in support of the
2 nominee?

3 Anybody in opposition?

4 MR. TORRES: Mr. Chairman, Arnold Torres.

5 I greatly appreciate the process of the Rules
6 Committee to come and testify at a time of an appointment,
7 because it is one of the few times in any process in which
8 there's an opportunity to have some accountability and some
9 oversight of things that have not been done. Sometimes the
10 oversight, in our opinion, should be focused on the nominee, and
11 other times it should be focused on the nominee's agenda for
12 addressing the issues that have been not be addressed for a long
13 time within a bureaucracy.

14 In this case, we are in opposition to Mr. Semmes
15 because we believe that the California Conservation Corps is
16 truly a jewel in all of the nation. It is a jewel in terms of
17 what it offers, because there are no losers in the vision that
18 people had when they created it.

19 In the strategic plan that we presented to
20 Mr. Semmes in September, prior to his interview for the position
21 of Director of the CCC, we wrote to him and cited the mission of
22 the CCC as stated in the California Public Resources Code,
23 Section 14,000 (d):

24 "The Legislature therefore
25 reaffirms its intent that the
26 Corps' mission includes increasing
27 awareness of and improving our
28 natural resources, but more

1 importantly includes instilling
2 basic skills and a healthy work
3 ethic in California youth, building
4 their character, self-esteem, and
5 self-discipline, and establishing
6 within them a strong sense of civic
7 responsibility and understanding of
8 the value of a day's work for a
9 day's wages.

10 "Furthermore, it is the
11 further intent of the Legislature
12 that Corps members graduate from
13 the Corps with good work habits,
14 positive attitudes, and broadened
15 professional horizons. It is the
16 intent of the Legislature that the
17 Corps blend academic and job skills
18 training with personal growth
19 opportunities in order to develop
20 productive youths who can make
21 substantial contributions as
22 California workers and citizens."

23 The creation of the CCC is probably one of the
24 greatest accomplishments that this Legislature and the Governor
25 at that time was able to achieve up until that time. It was a
26 great vision. It was going to be targeting at-risk youth. And
27 rather than dealing with at-risk youth in the context of "woe is
28 me" mentality, it took and created a positive environment, one

1 in which they actually could see their self-esteem come up, and
2 they could develop the job skills. They would be making great
3 contributions to the environmental protections of this state and
4 the needs of this state.

5 So, it remains conceptually very much a jewel.

6 We believe that the person in this position
7 really must really be phenomenally dedicated and have an
8 extremely strong understanding of the problems that this agency
9 has encountered since its inception.

10 And we believe, as we had discussed with your
11 staff, that one of the reasons why so little attention is
12 focused on this entity during the budget process and during any
13 efforts by the Joint Audit Committees or the Legislative Analyst
14 is because it's a very small agency. And regrettably, many of
15 you have worked on both sides of this Legislature, and we've
16 come to understand that the budget process does not focus on the
17 small potatoes. It focuses on the big budget items, on the big
18 ticket items that draw either the attention or have major budget
19 considerations.

20 As a consequence, this agency, in our opinion,
21 has been dying a slow death. And who suffers that slow death
22 more than anyone else? It is the young person, the young male,
23 the young female, who comes in as a recruit to work in the
24 Corps, who has been told when you read this section that there
25 are a lot of things that are going to be given to them.

26 We do not believe under any circumstances that
27 Mr. Semmes is responsible for the problems that come before him.
28 He has inherited an agency that, regrettably, has had too many

1 directors that have been given the benefit of the doubt that
2 they're going to do a good job.

3 And once somebody is confirmed, with very few
4 exceptions, is there a process in the Legislature that really
5 holds people accountable. The budget, again, focuses on only
6 certain items. And we never come back in a way that allows us
7 to really assess whether in fact agencies and directors that we
8 appointed, and people approved, are in fact doing what they came
9 before this body and said they were going to do.

10 We believe that that process should stop, and we
11 offer the following recommendations because we believe that Mr.
12 Semmes is in fact going to be confirmed by this body.
13 Nonetheless, we believe that there must be a reasonable
14 monitoring and accountability process. So, we propose the
15 following things.

16 And the reason for it is because we've met with
17 Mr. Semmes, and we believe that we were not presented with the
18 realities of what we have seen since his appointment. When we
19 met with him, it was a very, very positive discussion. It was
20 an extremely candid one.

21 We presented to him, as I said, and I'd be more
22 than happy to present to you, a twenty-some-odd page strategic
23 plan that provided for 30, 60 and 90 days of activities. None
24 of these on behalf of the Association of Conservationist
25 Employees had anything to do with labor-management. This was
26 not about giving employees of the CCC more power, better jobs,
27 greater benefits.

28 This was about trying to make the CCC realize and

1 go back to what its original mission was. And that is seldom
2 ever the case when that happens. Usually there's a personal
3 agenda. There was no personal agenda here. It was trying to
4 actually have the CCC be what many people have committed their
5 lives to doing. Not directors that come and go, but people
6 who've dedicated their lives to making it work the way that it
7 was supposed to work.

8 We are very disturbed that many of the things
9 that we discussed with Mr. Semmes are not even part of the
10 horizon. We don't know where the strategic plan is. So, we
11 believe these three recommendations would be very helpful for us
12 to hold accountable this new Director of the CCC, unlike
13 others.

14 The first one is that we would require meetings
15 with the Association of Conservation Employees representatives,
16 field staff, and Corps members on the development of the
17 strategic plan he has been representing he is developing. He
18 must submit a draft plan no later than June 1st, 2005 for
19 discussion and feedback.

20 This letter was dated May the 9th when we
21 submitted it to you, the Chairman of this Committee, to your
22 staff. Obviously, that date would have to change.

23 Our concern here is that these kinds of meetings
24 should not be orchestrated meetings. They should not be
25 meetings with field directors that basically bring in people who
26 are going to tell the director and upper management what they
27 want to hear. It should be an honest dialogue in which people
28 are finally listening to the people who've been in the system

1 for a long time so they can really understand what works, what
2 doesn't work, ideas that are coming from the people who are
3 actually involved on that front line on a daily basis.

4 The second recommendation, require a State
5 Personnel Board audit of the personnel decisions made in the
6 last two years to assess favoritism, manipulation of regulations
7 and rules to benefit management and/or friends and relatives of
8 upper management, excessive discipline, unfounded and/or
9 frivolous complaints that resulted in no substantive findings or
10 actions, and any other such practices and behaviors that are
11 inconsistent with personnel practices and accepted standards.
12 This audit should involve interviews with employees who have
13 left the CCC because of these issues and any other sources the
14 SPB considers helpful to their work.

15 We discussed this major concern with Mr. Semmes.
16 He did indicate to us in our very last meeting that we had with
17 him that he thought that this was a very appropriate course of
18 action to take. Regrettably, we never met with him again after
19 his appointment was announced by Governor Schwarzenegger. And
20 we never had any opportunity to follow up on this issue
21 whatsoever.

22 We believe the following. In our discussions
23 with staff, some people say, well, these are not his problems.
24 Our attitude is, if it's not his problems, then there shouldn't
25 be a problem with SPB doing an audit so that we can understand
26 exactly where the baseline is. Where are the problems? Are
27 there problems or aren't there problems? If there are no
28 problems, great. He can move on to other agendas. But if there

1 are problems, then we ought to be able to have a third party who
2 really understands these issues of personnel practices being
3 able to tell him directly what the issues are, and what are the
4 kind of changes that ought to be looked at.

5 The third thing is that we would require Mr.
6 Semmes to submit a written monthly report to the Rules Committee
7 that, among other things, would report on the progress he is
8 making on the issues identified in this letter concerning the
9 noncertified charter school. We don't know as of today whether
10 the charter school is still uncertified or not. Could be. He
11 announced today that he's got a new deal with the school to
12 increase the number of academic or educational programs, or
13 classes that are taken by the Corps members.

14 Again, we don't know if that school, Muir School,
15 is in fact certified today because when we met with him, it
16 wasn't chartered [sic], and as of April, we were not sure -- we
17 were sure that it wasn't chartered back then either.

18 Second one, lack of emergency training and
19 counseling of conservationists. Lack of emergency training.
20 There was an incident in Stockton in which 9-1-1 had to be
21 called because many of the conservationists do not have the
22 necessary life support training, CPR training, that they are
23 required to have.

24 If there had been an accident in a canyon or in a
25 remote area that's inaccessible to a 9-1-1 ambulance or a
26 helicopter, what would have happened to the Corps man? What
27 would have happened to the staff if the training is not done?

28 This is an example of what we're seeing. Some

1 people would say it's a budget consideration. There has to be
2 some priority given to what kind of training's going to be in
3 the first pecking order. This has not been addressed, as far as
4 we understand, by Mr. Semmes or his upper management that he's
5 brought in, and that he so specifically referred to that he
6 believes is very important.

7 Second, counseling of conservationists.

8 Conservationists are dealing with kids who are at-risk, kids who
9 do bring with them lot of difficulties, kids who bring with them
10 dysfunctions. The people who are working with them are the
11 conservationists. Those conservationists need to be properly
12 trained on how to counsel these kids. For whose good? For
13 everyone's good. Interrelations, relations between staff and
14 Corps members, et cetera. And there is no training going on
15 along those lines as well.

16 The third area, progress made on improving the
17 educational and other services to Corps members. It's great
18 that an announcement has been made today that he's going to be
19 working with a new school, but where is that in the context of
20 an overall vision of the CCC? How do we know that that
21 educational program that he's talking about is really going to
22 be what the Corps members want and the Corps members are going
23 to actually take in?

24 You're going to hear today from two Corps members
25 who will give you and probably should answer -- ask any question
26 that you have about those issues. But we believe there has to
27 be a lot more importance given, and a lot more priority given to
28 the kind of educational program that's being offered by the

1 Corps. And again, it is consistent with what the original
2 mandated intent of the mission of the CCC was about.

3 Third, members --

4 CHAIRMAN PERATA: Excuse me. You're not going to
5 go through all 20 pages, are you?

6 MR. TORRES: No, no. I'm just going to go
7 through those three points.

8 CHAIRMAN PERATA: Okay.

9 MR. TORRES: Progress made in improving -- okay.
10 Members as opposed to projects. Progress in
11 pursuing more environmental work projects for Corps members as
12 opposed to projects intended to only generate revenue.

13 This is an issue we discussed with Mr. Semmes as
14 well. Thought that we were going to get some progress on that.
15 We don't see much progress at all.

16 Procedures. Again, the issue there has been,
17 well, this is a mandate that the Legislature took away. The
18 Legislature did not revoke, it did not repeal, any original
19 language that it instituted when it created the CCC. So when
20 budget considerations were made that you had to generate revenue
21 because you had to go out there and pay as you brought in the
22 Corps, you end up having projects that have absolutely no
23 significance, like cutting chickens' heads off because of the
24 influenza of chickens down in Southern California. Those are
25 the kinds of projects that Corps members are involved in.

26 I don't know how that helps self-esteem under any
27 circumstances.

28 Procedures he has undertaken to better prepare

1 field staff in developing work projects in their districts, and
2 his plan for hiring more diversified staff with experience in
3 dealing with Corps members, environmental projects, and at-risk
4 youth.

5 Again, our opposition is clear. However, we
6 believe that a more constructive approach is the three
7 recommendations that we've asked this Committee to please apply
8 to this confirmation. We would ask that these things be pursued
9 between now and the time that his one year is up, which would be
10 in September. That after that, we'd ask for an additional three
11 months in which the reports on those areas should be submitted
12 to this Committee or any committee that the Rules Committee
13 considers to be appropriate.

14 We believe these are very, very reasonable
15 requests, and regrettably Mr. Semmes has been confronted with
16 the incompetence of previous directors appointed by two
17 different political party administrations, but both of them have
18 not done the job that should have been done on behalf of these
19 kids, and a disservice to the intent of an extremely important
20 and great idea of the California Conservation Corps.

21 So, I greatly hope, and I request strongly that
22 that language be seriously considered by you all, and accompany
23 Mr. Semmes through his approval as the Director of the CCC. We
24 believe there be no losers if these things can be done, and if
25 this accountability and oversight is in fact placed on the CCC.

26 Thank you very much, Mr. Chairman and Members. I
27 hope there's some questions.

28 CHAIRMAN PERATA: Anyone else here? Yes, please,

1 come on up.

2 MR. GREEN: Good afternoon, board members. I'm
3 Christopher David Green, a Corps member at the California
4 Conservation Corps. I'm the assigned crew leader on the Delta 5
5 fire crew. I'm also the Vice President of our district county
6 advisory board and have been recognized for outstanding effort.

7 I'm here to give you the inside scoop and the
8 real deal. I'm who this program is for, and am the first Corps
9 member to ever appear at a director's confirmation hearing.

10 There are many concerns that I have with the
11 Corps, one of which is certifications. I've been here eight
12 months and still have not received my CPR First Aid Card, a
13 basic -- a basic training given to all Corps members.

14 As far as that goes, I have been -- there has not
15 been any opportunities to gain certifications. I've been
16 promised fire training, saw training, and leadership training,
17 and was even selected for a search and rescue crew back in
18 January 2, 2005, yet have no search and rescue training.

19 I was also promised a CDF training academy in
20 Butte, still nothing. Things are not happening at the Delta
21 Center.

22 In taking -- in talking to other Corps members at
23 other centers, we fight the same battle. I believe our center
24 has potential to become the best center in the program, but very
25 few staff members step up and do their jobs, and Mr. Semmes has
26 done little to change that. It's actually gotten worse.

27 We have basic -- we don't have basic supplies
28 such as gloves, protective equipment, and we're told they can't

1 afford them right now. Yet we have center directors that take
2 state vehicles every night. With gas prices up, that's a lot of
3 gloves that we could have.

4 I'm in the business of lifting people up, making
5 them realize they can reach their goals. That is not going to
6 happen if we have people that are non-res having to pay
7 residential rates just because the center needs money. When did
8 this program become -- become a profit at the expense of Corps
9 members?

10 Then we also have Corps members causing chaos,
11 yet staff and residential advisors are not working together and
12 appear not to care. My center is not good, let alone great.
13 But isn't it time we should be aiming for it?

14 People need to be put at a lot higher standard.
15 We have tried to make changes by meeting with our center
16 director, but nothing.

17 Coming to you today -- coming to you today seems
18 to be the only setting where someone will listen. And I hope
19 that you care enough about us Corps members that you will make
20 changes happen. Young men like ourselves will not amount to
21 much without a good program. This program could be one of the
22 greatest assets of the State of California. From the state
23 giving us at least -- from the start, if the state gives us at
24 least what we're promised, we are making little difference in
25 our community now. But once we realize we're conservationists,
26 and we are just not here for our community but for our state,
27 representing a great part of our country, that would be
28 incredible.

1 We have stepped it up and will do anything to
2 make this program better. Isn't it time for staff, beginning
3 with our directors, to become accountable, responsible, and add
4 trusted to do the same?

5 My intentions are not to target individuals, but
6 rather to make positive things happen and create change.

7 This is my colleague, Eric Rodriguez. He would
8 like to say a few things.

9 MR. RODRIGUEZ: How are you doing, Members? My
10 name is Eric Rodriguez. I, too, am a member of California
11 Conservation Corps. I'm also an ACO on Delta 5 fire crew.

12 In the eight months that I've been here, I too
13 have yet to receive all the training that I have asked for and
14 been promised. Most of the staff have made me realize that we
15 have to be the answer.

16 We do this because staff won't. They do the
17 least they can. Please understand this is far from empowering
18 and very close to lazy.

19 It is time the CCC staff answers and it is why I
20 am here today. You have the power to make things right and hold
21 people accountable.

22 Most of our staff doesn't lead by example, as I
23 expected they would. Given that we are a work ethic and
24 training program, we look to them to lead and be examples to
25 follow, but getting nothing but lip service. If they don't give
26 me the skills and training to develop myself, how can I progress
27 in life.

28 I left my home in San Diego with hopes of

1 becoming a better person, more employable, and an example for
2 others to follow, everything the CCC sells but doesn't deliver.

3 Every month we get evaluations to assist us in
4 our development. Most of our staff would fail if we evaluated
5 them.

6 The next time someone fresh comes in and knows
7 what they're doing, with love and ambition for the job, if you
8 would like for us to come back in the near future and tell you
9 how the center is doing, we will.

10 But we need you to help us build the program that
11 everyone thinks is being delivered.

12 I appreciate the time being up here, speak to you
13 guys.

14 CHAIRMAN PERATA: Thank you both for coming.
15 Appreciate it.

16 Anyone else that would like to address the
17 Committee?

18 MR. GREEN: If you guys would like to open up for
19 any questions, we'd like to answer them.

20 CHAIRMAN PERATA: We will do that. If we have
21 any, we'll ask you. Thank you.

22 Yes, sir. Come on up.

23 MR. COVELLA: My name is Mark Covella. I'm the
24 Center Director for the Ukiah CCC center.

25 I've got 23 years with this agency, starting as a
26 Corps member back in the early years, 1978. And have moved up
27 through the ranks over those years and have filled different
28 positions, including positions that were -- I was a job steward

1 for the union at one time, and a supervisor, now a manager.

2 In my 23 years in the CCC, short of Director B.T.
3 Collins, I haven't seen energy in this program like I've seen in
4 the last nine months. This program was on the brink of
5 disaster. It was bleeding profusely.

6 Last September, Director Semmes came in and
7 brought a new vitality into the program. He stopped the
8 bleeding. He's turned it around. I haven't seen the energy
9 that I've seen in the department since Will came on.

10 The Corps members and staff are all energized in
11 the field. The morale was pretty low. We were losing a lot of
12 staff, and Corps members numbers were dropping.

13 We've turned that around, and we're starting to
14 come back.

15 So, you know, I had to come up. I didn't plan on
16 it, but I had to come up and share with you those thoughts.

17 I hope the Senate confirms Will.

18 CHAIRMAN PERATA: Thank you, sir.

19 Yes, come on up.

20 MR. KREB: My name is Mel Kreb. I'm that field
21 staff person Will talked about.

22 I was in San Bernardino and shook the hands of
23 the first Corps members in the California Conservation Corps who
24 came off the bus.

25 I've worked my way up through the organization.
26 I've supervised crews. I've held almost every field position
27 that you could have in the Conservation Corps.

28 I don't mean to offend you, but I never wanted to

1 work in Sacramento. The only reason I came here after being a
2 very successful district director, including this year being
3 given the Restorations of the Year Award by the Salmonid
4 Restoration Federation for our coastal fisheries program that
5 extends from the Oregon border south to Mellow Wood Creek.

6 But the only reason I came here was because I met
7 Director Semmes last September on the way to the back country
8 trails debriefing at Camp Mather outside of Yosemite. And we
9 talked in the car all the way there and all the way back. I
10 realized and I knew that the Corps was in crisis because of the
11 amount of the budgetary cuts we had taken. And as far as I was
12 concerned, we were on the edge of being so small as to collapse
13 inward and cease to exist.

14 To me, since I've spent more than half of my life
15 with the Conservation Corps, it was very important to believe
16 that we had a director who was going to help rescue us from the
17 brink. And I found that in Will Semmes.

18 Now, I'm a registered Democrat, so you may wonder
19 why I'm here with a Republican appointee. But I believe that he
20 is -- I mean, I knew B.T. Collins. Collins is the guy that
21 opened the door for me, from rank and file into a supervisory
22 position.

23 And Will's the closest person we've had since
24 that time to a director who really believes in what we're doing,
25 and really believes in the Corps members.

26 I'm surprised by the comments that have been made
27 here because we had wonderful environmental programs where I
28 worked. We had great educational programs. I'm not really --

1 you know, all these things need to be addressed, obviously.

2 But I think he's turned the program around.
3 We've all ready stepped back from another \$11.3 million
4 potential cut that was recommended by the LAO's Office. We have
5 stabilized our funding. All that's been done by Will's
6 integrity and his perserverance, and the fact that people feel
7 energized by his presence in the department.

8 Thank you very much for being able to comment.

9 CHAIRMAN PERATA: Thank you.

10 Anyone further?

11 MR. BOONE: My name David Boone. I served as a
12 deputy director under Governor Deukmejian in 1985 through '88
13 with the California Conservation Corps.

14 I've been volunteering at the Ukiah Center
15 probably now for a little over -- going on my third year. At
16 the same time I'm volunteering for the California Highway
17 Patrol, so, you know, I'm sort of mixed here and there.

18 But I'd like to say that I have watched this
19 program, and I have loved this program a lot more than a lot of
20 people do because I've been able to be on the inside and also,
21 one would say, on the outside; in the field and also from the
22 administrative side.

23 I know, and I came out of retirement here about
24 five years ago, so I'm back. And I'm back at home, and I'm
25 doing things that I enjoy doing.

26 About the best thing that happened to me, of
27 course, in the last few years is the fact when Will came on,
28 we've had opportunity to speak to each other, you know, man to

1 man, and talk about things. And I feel this is the best thing
2 that could happen to the Corps at this time, because in his
3 heart, he's looking at a lot of the good old days, and I can
4 feel that.

5 And I know that the programs really, really have
6 been going through a lot of stress over the last few years
7 because it's very difficult when you get a new administrator or
8 someone that's being appointed to come into the program.

9 But I can just say to you that I came out of
10 retirement, and I came out for good reason. And the good reason
11 is because I feel that the program now is turning around, and
12 we're going to provide and give back all those things, as we
13 spoke about earlier that were mentioned.

14 And it's an honor for me to come out of
15 retirement and work with Will. I'd like to say that.

16 CHAIRMAN PERATA: Thank you.

17 MR. WOLSEY: Good afternoon. My name is Scott
18 Wolsey. I'm the Central District Director.

19 I've heard a lot of what people have said. I
20 want to kind of reiterate that over the past three to four
21 years, I've watched the Corps get cut year after year after
22 year. And I feel like this is the first time that I feel like
23 we're turning the corner, and we're on the right track.

24 I think Will is the right person to re-energize
25 the Conservation Corps. I think that I have not seen this kind
26 of enthusiasm.

27 Granted, we have a lot of work to do. A lot of
28 what Corps members said today, certification programs,

1 additional training, the Corps members are out earning dollars,
2 out doing work for money. And that's probably because our
3 general fund has gone from \$60 million down to \$20 million
4 without cutting more and more Corps member positions.

5 So, I'm here to say that I've worked with Will
6 since he arrived in September, and I've seen a lot of
7 enthusiasm. I've seen a lot of progress. And I think we're on
8 the right track to turn this organization around.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 Anyone else?

12 Do you have any family here?

13 MR. SEMMES: No, sir. This is it right here.

14 CHAIRMAN PERATA: Any final questions?

15 SENATOR CEDILLO: Just the insanity of taking
16 over an organization that is 66 percent cut.

17 MR. SEMMES: Yes, sir, over the last four years.

18 SENATOR CEDILLO: It's incredible.

19 MR. SEMMES: It's pretty brutal. I think at this
20 point if there's an analogy, if I may respond, sir, is we've got
21 the heart beating back on the EKG, and now it's time to take the
22 patient off the table.

23 So, I think the patient's alive and is going to
24 stay alive. And it's now just a question of how fast he's going
25 to run and when.

26 SENATOR CEDILLO: And the strategies for
27 stabilizing that revenue stream, you are doing public-private
28 partnerships?

1 MR. SEMMES: Yes, sir.

2 SENATOR CEDILLO: You're providing services to
3 the private sector?

4 MR. SEMMES: Well, the first thing I did when I
5 came on board is asked some people why they hadn't set up a
6 grants office, despite all of the cuts. So, I did that, and we
7 have a full-time grant writer who's focused on basically
8 diversifying our funding sources, and particularly going after
9 federal funds.

10 So, we've been very proud about bringing federal
11 funding into the state. We're doing a \$9.1 million Workforce
12 Investment Act grant in San Diego to hire people who were
13 displaced by the wildfires and the electricity crisis. That's
14 been incredibly successful. So, we'd like to see that
15 duplicated around the state, and Patrick Henning at EDD has been
16 very supportive of helping us work through that process.

17 SENATOR CEDILLO: Tell me about other strategies
18 for other revenue streams that you're working on.

19 MR. SEMMES: Well, we are a reimbursement agency,
20 and we earn the budget of the CCC essentially on the backs of
21 the Corps members. So, we need to do more reimbursement work,
22 but we need to do reimbursement work that pays us at rate that
23 enables us to not spend all of the Corps member's time on the
24 grade.

25 Right now, I'd say the average amount of time a
26 Corps member's spending actually working on the grade, on the
27 road grade analogy, is about 75 to 80 percent. And that really
28 leaves a very small amount of time to be spending in the

1 classroom to get the GED, get the high school diploma, get those
2 other certificates so that they can have something on their
3 resume when they go apply for a job. And so, I'm trying to get
4 contracts.

5 Like, we just signed a \$9-1/2 million deal with
6 Caltrans that has the pre-apprenticeship program as part of it
7 so that we can get the work, but still do enough training that
8 the Corps members go on and get a good job right after the CCC.

9 SENATOR CEDILLO: Tell me about your work in Los
10 Angeles, Mercedo, and what you do down there.

11 MR. SEMMES: Sure, that's true. We've got the
12 Runyon and Main Center right in downtown L.A., right down the
13 street from the Los Angeles Conservation Corps, and our
14 Norwalk Center as well. We've also got Inland Empire down
15 there. And there are some centers that are nonresidential. We
16 have a residential center in Camarillo, not too far. But we
17 would like to see those nonresidential centers get back to being
18 residential.

19 That's not going to happen without some
20 adjustment in our funding. We're going to have to find some
21 money somewhere.

22 But the Norwalk Center in fact has been the locus
23 for the Caltrans work, because Caltrans needs employees down
24 there badly. We've got the center. We've got the people. Our
25 Southern District Director, Jose Phillips, is superb. He's been
26 with the CCC for 19 years and knows exactly what he's doing.
27 So, I'm very confident that he's working hard to build up our
28 Los Angeles operations. And I very much enjoy visiting him

1 whenever I can.

2 SENATOR BATTIN: Move the confirmation.

3 SENATOR BOWEN: I have a couple. Let me follow
4 on to Senator Cedillo's question.

5 My questions to you are really questions to the
6 Legislature through you. I'm very concerned about, with the
7 loss of funding, and concerned about the move to relying so
8 heavily on the projects, like Caltrans projects, that we're
9 losing the original focus that B.T. Collins and others had.

10 When you take people into the Caltrans projects,
11 what are they doing?

12 MR. SEMMES: They're doing everything from
13 culvert maintenance. There are a lot of roads that were built
14 just right over streams without any regard to the natural
15 habitat. And a lot of those roads are disrupting anadromous
16 fish passage. And so, we are going in to a lot of these roads
17 to build proper culverts so that fish can actually pass
18 underneath or over the roads, depending upon where they are.

19 We're also doing a lot of roadside maintenance,
20 including irrigation work. Caltrans has spent a huge amount of
21 money removing non-native plants and putting in native ones,
22 after, unfortunately, they planted the non-native plants a
23 number of years ago. We did a huge amount of Scotch Broom
24 removal up along the north coast on 101 in particular. And
25 we're doing a lot of just roadside brush clearance, and fuel
26 hazard reduction, particularly around Scripps Ranch in L.A.

27 And we would like to do more environmental work
28 with Caltrans. They are funneling us some more of that money.

1 We're doing GIS mapping work also. That's going to start with
2 this new contract, which will enable the Corps members to get
3 those skills that are very useful today. There are a lot -- the
4 GIS, Global Information System, mapping industry is growing by
5 leaps and bounds. So, that's been something great to funnel
6 Corps members into.

7 So, we're not doing as many environmental things,
8 traditional environmental things, like just plain old salmon
9 habitat restoration, where we're working on wetlands or
10 something like that with Caltrans, but we're trying to do more
11 and more.

12 SENATOR BOWEN: I think I'm concerned, because I
13 note that the tenure of the Corps members has dropped. They're
14 asked for a year commitment. I've seen variously that they
15 average a stay of a little over seven months or a little over
16 five months.

17 And I wonder to what extent finding yourself out
18 next to a freeway, maintaining an irrigation system or picking
19 up trash is not exactly what Corps members had in mind when they
20 signed up. And in particular, what kind of job skills you get
21 that are really transferrable and take you up the ladder, which
22 was part of the idea behind the Corps.

23 MR. SEMMES: True, and I can sympathize. I mean,
24 I first enlisted in the Marine Corps before I was an officer.
25 And I spent most of my time as a lance corporal standing in
26 lines and picking up cigarette butts in parking lots. So, I
27 didn't really find that my time was particularly well used as a
28 Marine enlisted man, but I understood that those were things

1 that had to get done while we were preparing for whatever we
2 were supposed to go do when the call came.

3 I think the same thing goes with these Caltrans
4 contracts. It's great work. It's tough and it's hard, but it
5 is great work, and a lot of Caltrans employees are former Corps
6 members, and I'm pretty proud of that.

7 Our retention rates, looking at it historically,
8 I've been looking at videos of B.T. Collins, and looking at
9 statistics from the early '80s, when I think people sort of
10 think of the Corps at its heyday. And he was quite proud of the
11 fact that only 23 percent of the Corps members were able to be
12 tough enough to stick around in the program for a year.

13 SENATOR BOWEN: Isn't the motto: Low pay, hard
14 work, miserable conditions?

15 MR. SEMMES: And they added, "and more" in the
16 most recent years.

17 So, I think that the retention rate has stayed
18 actually relatively static. We found that Corps members who
19 leave before six months generally are not interested in working
20 hard or have some sort of disciplinary problem. But Corps
21 members who stay after six months, up to a year, but leave
22 perhaps at seven-and-a-half months, which is the average, are
23 leaving because they get a good job somewhere else, which I
24 think is quite good.

25 SENATOR BOWEN: I had the privilege of spending a
26 few days in the back country with the Corps members a couple of
27 summers ago. Are you still running that program?

28 MR. SEMMES: Absolutely. In fact, I just sent

1 them off a couple of weeks ago. So, we have 100-and-some-odd
2 Corps members and staff out in the back woods, and we just got
3 another \$600,000 from the U.S. Forest Service, part of their
4 Centennial money, to do even more trail work that we'll be doing
5 mostly in our southern district. Our southern District Director
6 Phillips is going to be working a lot of that in the San
7 Bernardino Mountains. So, a lot of that's for the Pacific Crest
8 Trail.

9 SENATOR BOWEN: I remember at the time there was
10 a significant move to do more partnering with the Forest
11 Service, and there were some great people.

12 I have some photographs from that expedition that
13 I'll send you. I'll handle those in an appropriate manner.
14 They're digital, so we want to be really careful, because they
15 could end up anywhere.

16 Could you tell me a little bit about the status
17 of the high school? I was concerned about the fact that the
18 Corps members are attending an unaccredited high school. And
19 while they certainly can get their GED, if they do decide to go
20 on, what impact does that have?

21 MR. SEMMES: Sure, and it's a very valid
22 concern.

23 I did ask it early on. And 14 of the CCC's 24
24 centers are using the John Muir Charter School as their
25 educational provider. They provide GED and high school
26 diplomas. The other 10 are provided by a mixture of community
27 college and local school district. For example, Mark Covella's
28 center uses the Mendocino County School District as their school

1 provider, not the John Muir Charter School.

2 And the John Muir Charter School is not yet
3 accredited. And I understand that that process takes a number
4 of years to happen. They're a relatively new school. They were
5 chartered by the Nevada County School District.

6 I have asked them repeatedly when they predict
7 their accreditation will actually happen, and it's just hard to
8 say because it's not in their hands, in a sense.

9 And I think that the MOU we recently signed to
10 increase the amount of time Corps members are going to be
11 spending in those classrooms will help them with their
12 accreditation process. That's going to have to be a management
13 decision to determine whether or not we should stick with an
14 unaccredited school that has an uncertain future.

15 SENATOR BOWEN: So, there's no understanding with
16 the school about accreditation?

17 MR. SEMMES: The understanding is that they're
18 working very hard to get it.

19 SENATOR BOWEN: What impact does that have if a
20 student, if a Corps member wants to go on to CSU.

21 MR. SEMMES: It doesn't seem to have any as far
22 as we can tell. In fact, the CCC gives almost \$6,000 in
23 scholarships to Corps members who want to go on to community
24 colleges or some sort of formal education after they leave the
25 CCC. And with a GED, you can get into the community colleges.

26 So, I think it's more of a personal issue that,
27 hey, this thing's not accredited. I don't feel that great about
28 it, versus whether or not it lets you into some schools.

1 It is a charter school, and a lot of these Corps
2 members are over 18 and did not get their high school diplomas,
3 so we know it's a nontraditional education path.

4 SENATOR BOWEN: My final question is, as you know
5 there's been an anonymous e-mail that's circulated. You've
6 probably seen it. There's been some concern about the way in
7 which people are treated in the office, in particular about
8 weight discrimination.

9 I just want to raise those issues. I know that
10 managing people is one of the hardest things that we can ask to
11 do. It's easier to build a culvert.

12 Can you talk a little bit about what's happened?
13 What you've learned?

14 I understand you also have to maintain discipline
15 and set standards. Sometimes that's not popular. I understand
16 that, too.

17 MR. SEMMES: I think that's -- it is a tough
18 thing to do, to come into an organization that has been through
19 such a rough time. And I made, to put it politely, significant
20 personnel changes.

21 So, I think people probably might not take --
22 when you're working for somebody for 15 years, and you develop a
23 loyalty, and all of a sudden that person is moved out of the
24 management structure, that can probably be quite frustrating.

25 One thing I did say to the staff when I came on
26 board was that the beatings will continue until morale
27 improves. So hopefully, that's sort of a joke; sorry about
28 that.

1 They sort of felt that they'd been beaten down so
2 many years by budget cuts, by other issues, that it was time to
3 be able to have some significant change.

4 And I think that there were people who were not
5 happy with some of the personnel changes that happened and so
6 sent anonymous e-mails instead of registering their complaint
7 with SPB, which I don't think anybody has done, or other sort of
8 actual personnel system changes.

9 SENATOR BOWEN: But I'm particularly concerned
10 with the expression of the person who, he or she, apparently was
11 criticized for their weight, their appearance of being
12 overweight.

13 MR. SEMMES: That's unfortunate. If I did that,
14 I would certainly apologize to that person.

15 SENATOR BOWEN: So, that's not a normal --

16 MR. SEMMES: I certainly hope not.

17 SENATOR BOWEN: All right. I just feel like in a
18 difficult situation, tough things to ask about, but I think it's
19 better to get it out there --

20 MR. SEMMES: Absolutely, thank you.

21 SENATOR BOWEN: -- let everybody be aware of it.
22 We'll see if you can do a better job than all of
23 us do.

24 MR. SEMMES: We'll see. Thank you very much.

25 CHAIRMAN PERATA: I have a question just relating
26 to the gentleman who spoke about the training.

27 It would seem to me that the CPR question is a
28 valid one, given the kind of work you do and where you do it.

1 And second, that anybody would be assigned to a
2 search and rescue unit and don't have training in search and
3 rescue, I'd feel like, well, they can search me, but I don't
4 want them rescuing me unless -- well, I'd decide that if they
5 were incompetent, what the hell, they're there; right? Give
6 them a flare.

7 But normally we would assume that when an EMT
8 arrives on the scene, they have training and somebody's doing
9 search and rescue. So, I share that concern.

10 How are you doing on that?

11 MR. SEMMES: Well, I think that a lot of that
12 training is actually quite easy to do, and it's just a question
13 of getting it done. And when you have an organization that's so
14 dependent upon reimbursement work, you have staff and Corps
15 members spending the majority of their time on the grade, making
16 money for the agency, and not spending their time doing
17 training.

18 I can tell you that about 50 percent of our staff
19 and Corps members are current on CPR. The other half, the
20 staff, I haven't actually found any staff that have not received
21 some CPR training at some point in their careers. Some have
22 received multiple points of training, but it's just that it
23 expired in the last couple of years.

24 So, we are working hard now to work with the Red
25 Cross and that kind of training in for staff. I think it's
26 vitally important.

27 On search and rescue, I think a lot of the search
28 and rescue that some of the Corps members might do is sort of,

1 "Look, line up and go through this forest."

2 And there's not a whole lot of search and rescue
3 training that can be done on that because these things happen
4 suddenly, and you all of a sudden need to get a few hundred
5 people out in a forest somewhere to find somebody. And that's
6 just walking through the forest to look for them.

7 CHAIRMAN PERATA: Well, I would just suggest that
8 on areas like this, if you're taking young people in and
9 intending to train them, this is a little bit more than when you
10 said they were working for Caltrans. That alone should warrant
11 them some safety training. Not because they're working for
12 Caltrans necessarily, unless it's on the Bay Bridge.

13 But I would encourage you, because, you know, it
14 makes absolutely no sense, both from a practical point of view
15 or a legal point of view, to put anybody in harm's way where
16 liability could be accrued.

17 And if you don't have enough money to do the
18 training, then that's something that you should buck upstairs.
19 Or, you know, she got an anonymous e-mail; you could send me an
20 anonymous e-mail.

21 But that's something that these young people
22 should have as a matter of course. I sure don't think at any
23 point -- it certainly was never the intention of the
24 Conservation Corps to put anybody at risk.

25 So, if you would, when you get your arms around
26 that, I'd like you to just communicate to me where we are and
27 what we're doing.

28 MR. SEMMES: Thank you. Absolutely.

1 CHAIRMAN PERATA: Anything further?

2 SENATOR ASHBURN: Just real briefly,

3 Mr. President.

4 I want to go back to the charter school issue.

5 Where is the school located?

6 MR. SEMMES: The school is located at 14 of our
7 24 centers. So, it itself is chartered out of the Nevada County
8 School District, but it has offices all over --

9 SENATOR ASHBURN: It has 14 different sites.

10 MR. SEMMES: Yes, sir. They are also --

11 SENATOR ASHBURN: And it's under a single
12 ownership?

13 MR. SEMMES: Yes, sir. They also --

14 SENATOR ASHBURN: Are all the students CCC
15 members?

16 MR. SEMMES: No, sir. They also are the
17 education providers to some other not-for-profit organizations.
18 There's some local conservation corps.

19 SENATOR ASHBURN: How many students per site,
20 approximately?

21 MR. SEMMES: It can range anywhere from four or
22 five to fifty. It just depends on the center.

23 SENATOR ASHBURN: Who does the accreditation?

24 MR. SEMMES: That's the WASC, is what it's
25 called.

26 SENATOR ASHBURN: Western Association of Schools
27 and Colleges.

28 MR. SEMMES: Yes, sir.

1 SENATOR ASHBURN: Have they applied for
2 accreditation?

3 MR. SEMMES: I understand that they have.

4 SENATOR ASHBURN: What's the status?

5 MR. SEMMES: I understand that they are in the
6 process.

7 And I just received this from Muir today, by the
8 way, that Muir is in the process of aligning curriculum to
9 California State Content Standards. It's setting up WASC
10 committees and gathering preliminary data related to state
11 mandated testing. And apparently it has put aside money in this
12 year's budget to hire a WASC consultant to help with the
13 accreditation.

14 SENATOR ASHBURN: When do you expect the
15 accreditation to be completed?

16 MR. SEMMES: I would like to know this year that
17 the accreditation's going to happen within the next two or so.

18 SENATOR ASHBURN: Two or so years?

19 MR. SEMMES: Well, I understand the accreditation
20 takes a number of years to happen, regardless of the
21 institution. It's a new institution. And so, we're going to
22 have come to a decision whether it makes sense for us to keep --
23 continue to use Muir or not.

24 SENATOR ASHBURN: Have you communicated with the
25 ownership or management of the school that the current
26 arrangement is unacceptable, and that a time certain for
27 accreditation be worked out between yourself on behalf of the
28 state and the ownership of the school?

1 MR. SEMMES: I have not demanded that. I should.

2 SENATOR ASHBURN: Why?

3 MR. SEMMES: Well, we -- I was concerned that we
4 were even going to use -- continue to use the John Muir Charter
5 School when I came on board.

6 SENATOR ASHBURN: That's a good question, is that
7 you set a deadline for performance. And if you don't, then you
8 go -- I mean, I'd be out for proposals now for alternatives.

9 MR. SEMMES: And I in fact have a proposal that
10 I've discussed with the Board of Education to start our own
11 charter school. I have no hesitation to look at that.

12 One of pieces of this was this Memorandum of
13 Understanding we just signed with the Muir Charter School to
14 increase the amount of time Corps members are spending in the
15 classroom.

16 I think that will be -- that we have now done our
17 part, to say, "Look, we've done everything we can to get you
18 accredited."

19 SENATOR ASHBURN: I'm not sure you have done your
20 part, because if there isn't a plan that you can articulate to
21 us today, this is an ongoing issue. If you can't articulate a
22 plan of action that involves your actions, and the responsible
23 party, and the management, ownership, of this charter school,
24 then you're not addressing the issue.

25 I mean, that's what you do when you're solving a
26 problem. You lay out the problem. You identify what I call
27 deliverables. You put a timeline to the deliverables, and
28 people agree on that. And if it means bringing in the WASC

1 evaluators to help you establish those timelines so that they
2 agree with them -- I'm amazed.

3 How long have you been aware that we've got a
4 problem over this charter school issue?

5 MR. SEMMES: The issue to me wasn't
6 accreditation, because the Corps members were getting the
7 education.

8 And that was the concern for me: Was the Corps
9 member getting a proper education out it?

10 SENATOR ASHBURN: How do you determine that?

11 MR. SEMMES: That they are sitting in the
12 classroom enough hours per day, and that they are able to pass
13 the series of tests that they need in order to get a high school
14 diploma or the GED.

15 So, with this MOU that we just did, Corps members
16 will be guaranteed more time in the classroom.

17 And I think next, obviously, is this
18 accreditation issue. And I have to make some demands.

19 And I'd love to report back to your office.

20 SENATOR ASHBURN: I really believe that if your
21 confirmation goes forward today, that by the time you come to
22 the full Senate, that you will have a written report that
23 outlines a timeline of action, and specific dates, and
24 alternatives if those dates are not able to be met. At the very
25 minimum, I would think you would want to do that.

26 MR. SEMMES: I'd be more than happy to do that,
27 sir.

28 SENATOR ASHBURN: Thanks.

1 CHAIRMAN PERATA: I would hasten to note,
2 however, if you're prepping somebody to pass the GED, the need
3 for accreditation is far less than it would be if you were in a
4 regular high school. These kids are 18 and older.

5 SENATOR ASHBURN: I understand that.

6 But if we have the opportunity to have these
7 young people in a school that is accredited, and gives them an
8 educational foundation that is beyond the GED, you know, that's
9 a good thing.

10 CHAIRMAN PERATA: And they could maybe teach CPR
11 to them.

12 Anything further?

13 We have a motion to approve.

14 Call the roll.

15 SECRETARY WEBB: Ashburn.

16 SENATOR ASHBURN: Aye.

17 SECRETARY WEBB: Ashburn Aye. Bowen.

18 SENATOR BOWEN: Aye.

19 SECRETARY WEBB: Bowen Aye. Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Battin.

22 SENATOR BATTIN: Aye.

23 SECRETARY WEBB: Battin Aye. Perata.

24 CHAIRMAN PERATA: Aye.

25 SECRETARY WEBB: Perata Aye. Five to zero.

26 CHAIRMAN PERATA: Five to zero.

27 If you get that to Ms. Sabelhaus before the
28 confirmation, she'll give it to the Senator.

1 MR. SEMMES: Yes. Thank you very much.

2 CHAIRMAN PERATA: Thank you very much.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately
6 4:15 P.M.]

7 --ooOoo--
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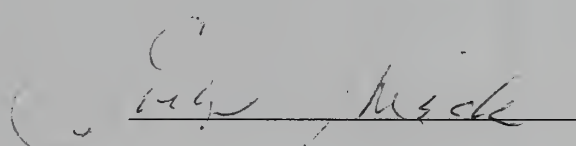
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of June, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Matthew L. Cate, Inspector General

Office of the Inspector General

June 3, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Chairman:


In preparation for the Senate Rules Committee's confirmation hearing on my re-appointment as the California Inspector General, the Committee has requested that I answer 12 questions related to the goals I have set for the Office of the Inspector General (OIG), as well as my progress in attaining those goals.

During my first appearance before this Committee 10 months ago, I delineated four primary goals for the OIG. They are: 1) to rigorously investigate and audit the various departments and boards of the California Youth and Adult Correctional Agency (YACA); 2) to infuse public transparency into OIG operations; 3) to collaborate with state correctional leadership and outside stakeholders to facilitate finding the best solution to each problem; and 4) to hold YACA accountable for implementing promised changes. These goals are designed to improve the effectiveness and efficiency of our correctional departments and to enhance the public's confidence in the correction system. These goals have not changed during my tenure as Inspector General and I remain steadfast in my desire to see them accomplished. Accordingly, I appreciate this opportunity to delineate our progress in meeting these objectives and look forward to discussing these matters further during the upcoming confirmation hearing. Here are the Committee's questions, along with my responses:

1. *How would you measure your success in achieving these [four] goals and fulfilling your mission?*

As noted above, the first goal and core function of the OIG is to rigorously audit California's correctional departments to uncover criminal conduct, administrative wrongdoing, poor management practices, waste, fraud and corruption by staff and management alike. I am proud of our success in this area. In the last 10 months, my staff has completed six audits and numerous investigations and inquiries. I would like to highlight four audits and one investigation in particular.

The first major audit conducted during my tenure was the California Youth Authority Accountability Audit. In this audit, released in January 2005, my staff reviewed nine previous audits, in which we made 241 recommendations, and found that the California Youth Authority (CYA) had implemented only 43% of those recommendations. For


Arnold Schwarzenegger, Governor

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example, the audit found that 9% of wards were locked down for 23 hours each day, despite assertions from the CYA that the practice had ended. The audit also discovered that wards at the Stark, Preston and Ventura Youth Correctional Facilities were not receiving the education or counseling services required by law. This audit resulted in the immediate cessation of the "23 and 1" housing practice throughout the CYA and has required its management team to develop a plan to address each deficiency delineated in the report.

In another important CYA audit, my staff conducted a management review audit at the Chaderjian Youth Correctional Facility and again found substantial noncompliance with the required hours of instruction and counseling services, along with severe security problems that endangered the safety of both staff and wards. As this audit was issued only last week, it is too soon to see the extent of its impact on the CYA, but early reports indicate that many measures have already been taken to address the safety and security problems the auditors uncovered. It also served to demonstrate that the problems with education and counseling services, identified in the earlier CYA audit, had not been addressed on a systemic basis.

Our first major audit of a Department of Corrections facility was precipitated by the shocking murder of Correctional Officer Manuel Gonzalez at the California Institution for Men. In this case, my staff responded to the institution on the day of the murder and began an intensive review of all security, safety, medical and emergency management issues that may have contributed to the tragedy. This audit uncovered numerous problems in these areas and we immediately published these findings on the OIG website. As a result, correctional managers, supervisors and officers throughout the state have read the report and questioned whether the same problems exist at their prison. Many correctional employees have confided to me that this report has been instrumental in effectuating positive change at their facilities.

The final audit I would like to highlight was initiated following a criminal investigation conducted by the OIG. In this instance, an OIG investigator discovered that a foreign-language interpreter employed by the Board of Prison Terms (BPT) on a contract basis had submitted false billings for her work resulting in a theft of over \$10,000.00 in state funds. This investigation was submitted to the local district attorney and resulted in a felony conviction and an order that the funds be repaid to the state. Following this investigation, the OIG conducted a special review of interpreter contract procedures and found that the theft was facilitated by lax financial controls. The OIG made a number of recommendations designed to provide tighter fiscal control and to prevent this type of fraud from reoccurring. The BPT had since agreed to these recommendations and is in the process of implementing them.

While we have had particular success in this area, we will continue to strive to improve the quality and quantity of our work. Our biggest challenge is allocating our limited resources in the manner that will have the greatest impact in a system of approximately 160,000 inmates, 53,000 employees and a budget near \$7,000,000,000.00. Through hiring additional professional and support staff, I hope to conduct more audits and cover a broader range of institutions and programs, thereby increasing our impact on California's correctional system.

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Turning to the goal of infusing transparency in the audit and investigative process, I believe we have attained unqualified success. The most important step we have taken is to publish every audit and special review on our website. Naturally, this has greatly improved the public's ability to know and understand the challenges facing our prisons and youth facilities. In addition, the first public report of OIG investigations will be released this month, and the newly created Bureau of Independent Review (BIR) is tracking every major internal affairs investigation at YACA and will issue its first semi-annual public report this July. Finally, the Legislature has partnered with the OIG in this effort by codifying the principles of transparency in the Penal Code.

The third goal, to collaborate with YACA and outside stakeholders, has been largely achieved. I continue to meet regularly with members of the YACA administration, the Governor's Office and the Legislature to report on the present state of affairs and to discuss "best practices" in corrections and successful methods of operation employed by other jurisdictions. To that end, I have also met regularly with interested stakeholders, including officers, inmates, labor, academia, the courts, advocacy groups and my colleagues in other states. In conveying these ideas and discussing various options to resolve any problem with YACA, I am careful not to demand a particular method or plan to address an issue. In this way, the OIG can maintain the freedom to criticize or praise the solution YACA ultimately adopts without sacrificing even the smallest part of our independence. As I learn more about the correctional community and the interested parties, I continue to broaden my base of professional acquaintances and my understanding of the substantive issues facing our correctional institutions.

Finally, the OIG has taken several strong steps toward meeting our goal of holding YACA accountable for implementing its promised changes. The OIG has completed the California Youth Authority Accountability Audit, nearly completed the Board of Prison Terms Accountability Audit (estimated release date is July 1) and expects to complete the California Department of Corrections Accountability Audit by early Fall. Perhaps more importantly, we established a system whereby every audit and special review conducted by the OIG now has an accountability component requiring the lead auditor to track and report on YACA's implementation of the audit recommendations.

2. *What do you hope to accomplish in the six-year term to which you've been appointed? How will you prioritize your goals?*

First and foremost, the OIG will continue to work towards fulfillment of the goals we have already set. As an oversight agency, it is critical that the OIG set an example of organizational discipline by staying focused on the objectives already adopted. If we are willing to abandon our core goals in order to strive after a new idea or popular concept, we can expect nothing more from the entities we oversee. Accordingly, the OIG will continue our commitment to the goals described above and will only make adjustments or add new goals to the extent that we do not sacrifice our core organizational values.

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That being said, with additional resources I do believe we can expand on our execution of present goals. For example, in the next year, the organization will be concentrating on establishing a process for auditing each correctional institution once every four years, and auditing each institution within a year of the appointment of a new warden, as required by SB 737. This will require the OIG to conduct 8-9 audits every year – a pace that far exceeds any achieved in our organizational history. To do so, the OIG will need to hire approximately 19 experienced auditors and several investigators in the coming year. Anticipating this need, we have already launched an aggressive recruiting campaign for these professionals. In addition, we will likely need to expand our presence in Central and Southern California in order to facilitate the execution of audits in those areas. However, it should be noted that we will only hire highly qualified staff because I am not willing to sacrifice quality for increased production.

As will be discussed in greater detail below, pursuant to SB 737 we will also establish a system for the evaluation of new warden candidates. By utilizing our present information gathering systems and adding intelligence gained through questionnaires and discussions with interested stakeholders, we will provide an accurate and balanced report on every warden-candidate the Governor's Office proffers.

In addition, I hope to focus additional resources on the task of uncovering government fraud and waste. In these difficult financial times, it becomes increasingly important to identify areas where our state resources are being misused or misspent, especially when overseeing one of the largest agencies in the state. As past OIG audits of pharmaceuticals and the medical contracting process have demonstrated, there are very likely additional areas of fiscal mismanagement that need to be addressed. Health care management as a whole is another area in which the OIG will become increasingly involved. At present the state is spending over a billion dollars a year on a prison health care system that, at least in many institutions, is badly broken. Regardless of the continued involvement of the federal courts in this arena, California should act quickly to provide a constitutional level of health care to inmates at a responsible price to the taxpayers.

In this vein, the OIG also has a long-term role in helping California extricate itself from the many lawsuits that impact our correctional system. The ultimate solution is compliance with the state and federal constitution, but one important component is the ability for the state to find and correct its own deficiencies. To this end, the OIG must not only continue to doggedly audit and investigate wrongdoing, but must also work with YACA to find and implement long-term solutions. For example, the BIR, working in cooperation with YACA, has vastly improved the state's officer discipline process, thereby moving the state closer to ending the *Madrid v. Schwarzenegger* lawsuit.

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3. *You inherited an office that had been reduced by budget cutbacks. Please describe how your office has grown in staff and budget. How much more growth is needed to perform your duties effectively?*

At the time of my initial appointment in March 2004, the OIG was preparing for closure and had an operating budget of \$3.3 million and a staff of 21 (from a high of 115 employee positions in 2003). In the current budget year, the OIG received an allocation of \$8.8 million and we have grown to 53 employees. This includes 38 professional staff and 15 administrative support staff. Last year, Penal Code section 6126, subdivision (d) was enacted into law and it provides that the OIG must establish a workload-based budget, beginning with the 2005-2006 budget year. In order to meet this requirement, the OIG has captured historical data establishing the number of hours required to complete each of our core functions, e.g., audits, investigations, special reviews, intake inquiries, and oversight, established an average for each and multiplied by the anticipated workload in the up-coming budget year. The anticipated workload was determined by starting with our current workload and adding the new obligations contained in SB 737, discussed above, along with those imposed by the federal court. Based on this calculus, we have determined that the OIG will need an additional 33 Deputy Inspectors General, along with 10 support staff, to meet the workload requirements for the upcoming year. The added staff will require \$6.55 million in additional funding. The OIG has provided a workload-based budget, consistent with this analysis to the Legislature, where it is now under consideration. Naturally, we will carefully track the work accomplished and hours expended in the coming year (utilizing our computerized Case Management System) and base any future budget requests upon those statistics.

4. *What audits and investigations have you conducted since your August 2004 confirmation hearing? Are you able to follow up on your audit recommendations to know if they have been implemented after each audit?*

Since August 2004, the OIG has conducted six audits and special reviews. Four of these are described in my response to question number one, including the CYA Accountability Audit, Chaderjian Youth Correctional Facility Management Review Audit, Special Review into the Death of Correctional Officer Manuel Gonzalez and the Special Review of Interpretation Services Procedures at the Board of Prison Terms. The office has also completed an audit of the Commission on Correctional Peace Officer Standards and Training (finding that the Commission was essentially non-functional due to poor organizational structure and persistent conflict between the three labor commissioners and three management commissioners) and a special review of inmate telephone revenues at the Victor Valley Modified Community Correctional Facility (finding that telephone revenues were benefiting private-prison management rather than reverting to the General Fund).

In the past, audits similar to those described above did not always result in positive change because the office did not consistently track the progress of the correctional departments to ensure that they were adequately addressing the problems identified in the OIG audits. We

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have now taken several important steps towards holding YACA and the correctional departments accountable to fix the identified problems. First, as described above, we have completed the first OIG "accountability audit" to measure CYA's progress in this area. The OIG has also nearly completed an accountability audit for BPT (estimated release date is July 1) and expects to complete a similar audit of the California Department of Corrections (CDC) in the next four to five months. Perhaps more importantly, we have established a new system whereby every audit and special review conducted by the OIG has an accountability component. As described earlier, this system mandates that the supervisor of any audit must track and report on the auditee's implementation of the audit recommendations.

Concerning investigations, in the last 10 months the OIG completed 88 investigations and formal inquiries. In general, the investigations involved high profile, complex factual scenarios requiring several Deputy Inspectors General to complete. Our investigations focus on misconduct by members of management and supervisory staff, or those cases demonstrating systemic problems. The formal inquiries are matters that are rejected after an initial fact-finding investigation or are determined to be minor in nature and are therefore resolved short of formal discipline. Those investigations completed in the first three months of 2005 are described in the OIG quarterly report, set for publication on June 6, 2005. Those investigations still in progress will be described in subsequent reports.

5. *What part are you taking in shaping the future direction of the California Youth Authority and in shaping its response to the Farrell v. Allen lawsuit that requires immediate improvements at CYA? What changes do you believe CYA must make to reduce recidivism? Do you believe the changes being proposed are sufficient to result in ward rehabilitation and reduced recidivism?*

The most important contribution we have made to the future of the CYA was the decision to conduct the California Youth Authority Accountability Audit and the Chaderjian Management Review Audit and to publicly report on the findings. By publicly revealing CYA's failures in the areas of education, counseling, mental health services, security and programming, the Administration, Legislature, courts and the public were able to better understand the scope of the problem and begin a new task of working towards a solution. I do not believe my contribution ends there, however, in that I am also diligently working to uncover the "best practices" in this field and to engage in discussions with interested stakeholders concerning the future direction of the CYA. For example, earlier this year I traveled to Missouri, Washington, Texas and Colorado with administrators from YACA, CYA and the *Farrell v. Allen* special master to gather information on the youth correctional models being used by our sister states. Some of the programmatic concepts used by these states have been included in the *Farrell v. Allen* remedial plan. Whether these changes will ultimately be successful depends to some extent on the quality of the implementation.

As other states have demonstrated, in order to successfully prepare wards for reintegration into society, the CYA must first commit to a process that emphasizes ward responsibility, accountability and rehabilitation at every level. Those states that have been most successful

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integrate positive peer culture and ward accountability into every part of their daily program. This means that every employee, from the counselor to the janitor to the director are constantly looking for opportunities to interact with the youth in a positive way and to direct the youth in a new direction. As the OIG audits have shown, the CYA is still failing at a basic level to provide education, counseling services and programming in a safe environment to many wards. Accordingly, CYA must begin to hire and/or train qualified counselors, teachers and administrators who are committed to changing the lives of youthful offenders in an effective, safe and fiscally-responsible manner.

6. *The Bureau of Independent Review (BIR) was created within your office to provide independent oversight of internal affairs investigations at CDC and CYA. What has it accomplished? What are its priorities?*

The BIR was officially created in late 2004 pursuant to an agreement with the federal court in *Madrid v. Woodford* and was codified on January 1, 2005. The BIR hired its first staff members, Senior and Special Assistant Inspectors General (attorneys), in January 2005 and is now in the process of hiring Deputy Inspectors General (criminal investigators). The BIR has opened offices in Sacramento, Bakersfield and Rancho Cucamonga, thereby covering the three regions of YACA's internal affairs office. Its staff are monitoring and reviewing the most serious and complex investigations being conducted by the Office of Internal Affairs. Thus far, the BIR has taken on 143 cases for review, with more being added every day. In addition, the BIR is making steady progress toward meeting with all of the wardens and investigative staff of the CDC and CYA facilities in each of their given regions. The BIR is also meeting with key stakeholders such as the California District Attorney's Association's Prison Crimes Committee, the Prison Law Office and key law enforcement agencies in each jurisdiction where a prison or institution is located, with the goal of facilitating better working relationships between CDC and the other stakeholders in the officer discipline process. The BIR also recently played a key role in preparing the special review conducted by the OIG into the circumstances surrounding the murder of Correctional Officer Gonzalez at the California Institution for Men and just completed a special review into the death of Inmate Daniel Provencio at Wasco State Prison (estimated release date is June 15).

In the coming year, the BIR's priorities are to become fully staffed in each regional office and provide real-time continuous monitoring of the most serious administrative and criminal YACA internal affairs investigations. In general, the BIR will review cases involving officer integrity, abuse of authority, sexual misconduct, use of force resulting in serious injury, assault on staff resulting in serious injury, use of deadly force, custodial deaths, serious allegations against a supervision and other serious matters. The BIR is also committed to ensuring that all internal affairs investigations are completed in a thorough, fair and timely manner. In addition, the BIR will promote systemic changes by publishing special reports on statewide officer discipline issues, assisting in the Internal Affairs Central Intake Project and through an expansive review of all regulations, laws, practices and precedents that impact the effectiveness of internal affairs investigations. The first BIR semi-annual report, describing its accomplishments, will be published in July 2005.

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7. *Last year you stated that you office received about 5,000 complaints a year. Has that number changed? How do you determine which cases to investigate? Have you been able to conduct the "trend analysis" described last August?*

The OIG receives complaints from inmates, wards, the family members of inmates and wards, correctional staff, inmate and ward interest organizations, and other sources. In 2003, the Office received 5,578 complaints. In 2004, the number of complaints dropped to 3,626, with the decline most likely resulting from the reduction of the Office's budget in 2003 and the announcement in 2004 of the plan to close the office. Because the number of staff had been reduced from a high of 115 positions in previous years to only 21 in the Spring of 2004, many complainants were advised that the OIG had insufficient staff and resources to respond to each complaint. As of May 31, 2005, the OIG has received approximately 1,550 complaints, which extrapolates to an annual rate of 3,720 complaints. I expect the number of complaints to grow as the year progresses due to media attention on the OIG's audits and investigations, as well as the fact that deputies no longer decline to handle complaints due to lack of sufficient staff.

The number and type of investigations the OIG conducts has significantly changed since the advent of the BIR. As noted above, the BIR performs real-time monitoring of YACA's more serious internal affairs investigations. Accordingly, rather than the OIG conducting either a parallel investigation or after-the-fact review of the Department's investigation, the BIR's mission is to make sure the Department conducts a proper investigation from the outset.

Because of this new model the OIG now primarily conducts three types of investigations. First, the OIG investigates allegations of retaliation by management employees if, after an initial inquiry, it is determined that a legally cognizable claim of retaliation exists. The second category includes those investigations that the correctional departments cannot or should not handle, such as where an apparent or actual conflict of interest exists. For example, the OIG generally investigates allegations against those at the warden level and above. Third, we investigate cases and conduct special reviews of incidents or allegations that reflect systemic problems. The special review of the fatal stabbing of Officer Manuel Gonzalez is a recent example. As noted above, the findings in that special review resulted in a change in safety and security practices and policy not only at the California Institute for Men, but also at other correctional facilities.

As for conducting "trend analysis," the OIG's case management system allows us to analyze complaints by institution. Currently, some investigators in my office are "bundling" complaints from various institutions and then traveling to those institutions to work on those complaints. While at the institution the investigators are not only able to work on the complaints, but they are also able to develop a sense of other problems and trends at the institution.

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Because there is a greater need to conduct trend analysis than our current staffing level allows for, I have requested an additional position for the Intake Unit. That new position will allow for a centralized information component within the Intake Unit that can provide expanded trend analysis, which will help managers, auditors and investigators establish policy and priorities. We will analyze complaints and other information for trends at institutions – such as repeated complaints of mistreatment or the failure to provide health care – and in the correctional system as a whole – such as systemic problems concerning staff safety or with inmate transfer requests. Ultimately our goal is to identify problems as they are developing rather than after they have boiled over.

8. *How have you handled complaints regarding CDC health care? What is your view of the direction health care should take at CDC?*

California's prison health-care system is in a state of crisis. A federal court has recently suggested that it will appoint a receiver to administer the CDC Health Care Services Division if the action is necessary to end the deaths of inmates resulting from incompetent care. The OIG receives many complaints every year concerning health care treatment issues. If the OIG intake deputy is able to discern from the complaint that it is a matter involving the risk of serious injury or death, the complaint is given our highest priority and an inquiry is immediately launched. The chief difficulty in this process, apart from the sheer volume of the complaints, is making an accurate determination regarding the legitimacy and seriousness of the claim without the benefit of on-site medical expertise. Accordingly, we often rely on information obtained from our professional contacts at the various institutions to ensure that a particular problem has been resolved.

The better approach is to address the systemic medical care issues facing the state with the intent of having the doctors, nurses and administrators provide quality care from the outset. To this end, I have directed the BIR to assist in the review of medical misconduct. While our involvement has not yet been fully defined, it appears that both CDC and the *Plata* plaintiffs would like to have the BIR provide oversight of medical misconduct investigations conducted by CDC's internal affairs office. This will likely require the OIG to contract with independent medical experts to provide information and counsel on particular cases. This effort corresponds with my view that the CDC should work with the federal court to address these monumental problems and avoid receivership if possible. While this effort must certainly include emergency measures to end the most serious deficiencies immediately, it should be remembered that it took many years of neglect to reach this present state of disrepair and it will take additional time to fix it. These necessary changes include competitive pay for doctors, nurses and administrators, investment in infrastructure and information technology, and a concerted effort to bring together the major stakeholders, including labor, management and the courts to reach mutually beneficial solutions.

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9. *What audits or investigations have you conducted or plan to conduct regarding the Board of Prison Terms? What are your findings? Is the BPT moving to correct the control deficiencies your office identified?*

The OIG has completed one audit of the BPT this year and has nearly completed another. In the first audit, the OIG reviewed the processes used by the BPT in the payment of interpretation services contracts. As described above, this audit was initiated by the OIG as a result of our criminal investigation into a series of fraudulent bills tendered by a contract interpreter in San Diego. The audit found that lax fiscal controls were at fault for the failure of BPT to detect the fraudulent bills. In response, the BPT has provided a comprehensive plan for remedying the problems identified in the audit and a timeline for implementing the necessary changes. A deputy inspector general is monitoring BPT's progress.

The second audit, currently in progress, is the Board of Prison Terms Accountability Audit. In this audit, the OIG is reviewing BPT's progress in addressing previously identified deficiencies in the process of conducting indeterminate sentence hearings and the process used in conducting parole revocation hearings. More specifically, the audit will focus on whether the system for identifying and scheduling indeterminate sentencing ("lifer") hearings provides sufficient information to properly manage the hearing process. In addition, the audit will question whether the BPT has taken proactive steps to reduce its historical backlog of lifer hearings. Concerning the parole revocation process, the audit will address whether the BPT is adequately supervising the deputy commissioners conducting the hearings and whether their decisions are undergoing a systematic review as required by law. The audit will also consider whether, in light of the broad changes brought about through the Valdivia lawsuit, the revocation tracking system required to manage hearing workload has improved since our initial audit.

As noted above, the accountability audit is nearly complete and should be published by the first week in July 2005.

10. *What role did your office play, if any, in the cancellation of intermediate sanctions for parolees? What is your view of the role of intermediate sanctions in California correctional policy?*

The OIG was not consulted and played no role in the cancellation of intermediate sanctions for parolees. My opinion of this program is the same as my view of all programs – they must be either supported or cancelled based on the empirical evidence. If the data demonstrates that a program is meeting its goals and having the desired effect, then it should be supported. If the evidence does not establish that the program is successful then it should be swiftly concluded. This is especially important where public safety is concerned. On the issue of parole sanctions, the argument for graduated or intermediate sanctions has been brought forward from a number of sources, yet YACA has publicly stated that their efforts in this area were not proved successful in reducing recidivism according to the empirical data. I

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have not yet reviewed this data and therefore cannot address whether this was an appropriate decision.

11. *As you know, the Senate will no longer confirm wardens. Instead, you are now responsible for vetting potential warden appointees. Please describe specifically how this process will work. What steps will you take to look into the prior activities of a warden candidate and inmate living conditions at institutions where a warden candidate was in a significant supervisory position?*

Senate Bill 737 added Penal Code section 6126.6, which mandates that the OIG review and make a recommendation to the Governor regarding each warden candidate within 90 days of submission of the candidate's name to our office. This will be a new function for the OIG.

Initially a background investigation will be conducted, which will include, but not be limited to, the typical background check done on a candidate for a peace officer position with the State. Each applicant will complete a personal history questionnaire that seeks information regarding his or her education, employment and military experience, finances and references, and relatives and friends, in addition to other relevant information. An investigator will conduct an initial interview of the candidate, interview the listed references and secondary references, attempt to confirm the information provided in the questionnaire and the interview, and eventually conduct a discrepancy interview, if needed.

The OIG will also solicit written information from individuals who are professionally and/or personally familiar with the candidate. This process will be similar to that used by the Commission on Judicial Nominees Evaluation for candidates seeking appointment to the State's superior and appellate courts. A questionnaire will be sent to the candidate's present and former supervisors, co-workers, and subordinates, union and stakeholder representatives, and others who are familiar with the candidate's suitability to be a warden. An investigator will follow up on pertinent information provided in the returned questionnaires.

In addition, either I or a member of my staff will visit the institution(s) at which the candidate held a recent supervisory position. Also, the OIG will consider complaints received by our intake unit and past audit reports of institutions where the candidate held a supervisory position at or before the audit was conducted. In both instances, due consideration will be given to the degree to which the candidate was in a position to influence the conditions observed at the institution. Interviews will be conducted with correctional staff, inmates, non-sworn staff and others who can shed light on the candidate's ability to operate a correctional facility, including the candidate's management style, relationship with staff, and treatment of inmates.

A comprehensive report will be written regarding the investigation of the candidate. After I have read and considered the report, I will interview the candidate and request any further investigative work, as needed. Finally, I will make my recommendation and send it to the Governor along with the investigation report.

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12. Legislation by Senator Romero passed as a companion measure to the YACA reorganization gives you responsibility for vetting wardens and conducting audits at each correctional institution every four years or within one year of a new warden being appointed. As you know, you are required to phase in these audits fully by July 1, 2009. Given the number of acting wardens currently in the system and the five who were awaiting confirmation who you now are responsible for vetting, how specifically will you meet the schedule set forth in the law for this process?

In order to meet the new mandates of Senate Bill 737, my staff and I have commenced a thorough planning process and have worked with the Administration and the Legislature to obtain the necessary funding and staffing levels. When Kern Valley State Prison is opened this calendar year, California will have 33 adult institutions. Therefore, slightly more than 8-9 audits on average will need to be completed each year in order to audit all 33 institutions once every four years. A team of six deputy inspectors general can complete approximately 3.3 management review audits per year. Currently I am able to field one such audit team, and the staff needed for the other two teams will be hired within the next few months.

Senate Bill 737 also mandates that the OIG audit each new warden one year after he or she has been appointed to that position. This will be a new function for the OIG; however, the Office will use a familiar tool to accomplish the task. I believe these audits will be akin to a management review audit, which is a comprehensive audit of how a correctional facility is being managed. The OIG's audit staff has the necessary expertise to conduct management review audits and to train the new auditors who will be hired in the coming months.

Based on the historical turnover rate and retirement pattern for wardens, it is anticipated that only 10 percent of all institutions will require both a correctional institution audit and a warden audit within the same four-year period. This is contingent on the OIG's ability to gather information about when the wardens plan to retire or otherwise leave their positions and use that information to schedule audits such that an audit of a warden who has been in office for a year can double as the correctional institution audit.

As for the warden vetting process, based on historical information received from the CDC, the OIG estimates that eight wardens or chief operating officers will be appointed on average each year. Currently, five wardens who have been appointed but not yet confirmed will need to be vetted. My staff will be prepared to start vetting candidates on July 1, 2005.

In conclusion, I would like to thank you for the opportunity to address the Senate Rules Committee regarding my reappointment to the position of Inspector General. I look forward to appearing before your Committee on June 8, 2005 and addressing your questions and concerns.

Sincerely,



MATTHEW L. CATE
Inspector General

CALIFORNIA ENERGY COMMISSION

ARTHUR H. ROSENFELD

COMMISSIONER

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May 24, 2005

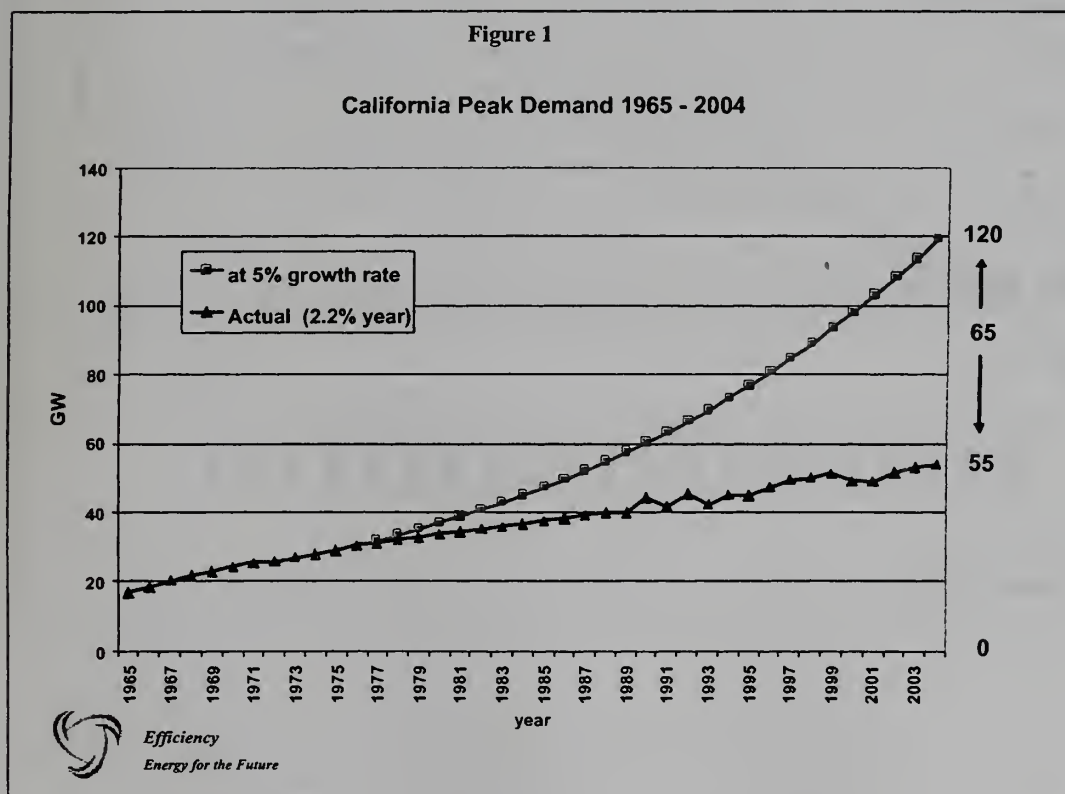
The Honorable Don Perata
President pro Tem
State Capitol
Sacramento, CA 95814

Dear Senator Perata:

Thank you for your questions regarding my views on energy issues. My answers are below, and I look forward to further discussions at my confirmation hearing on June 1, 2005.

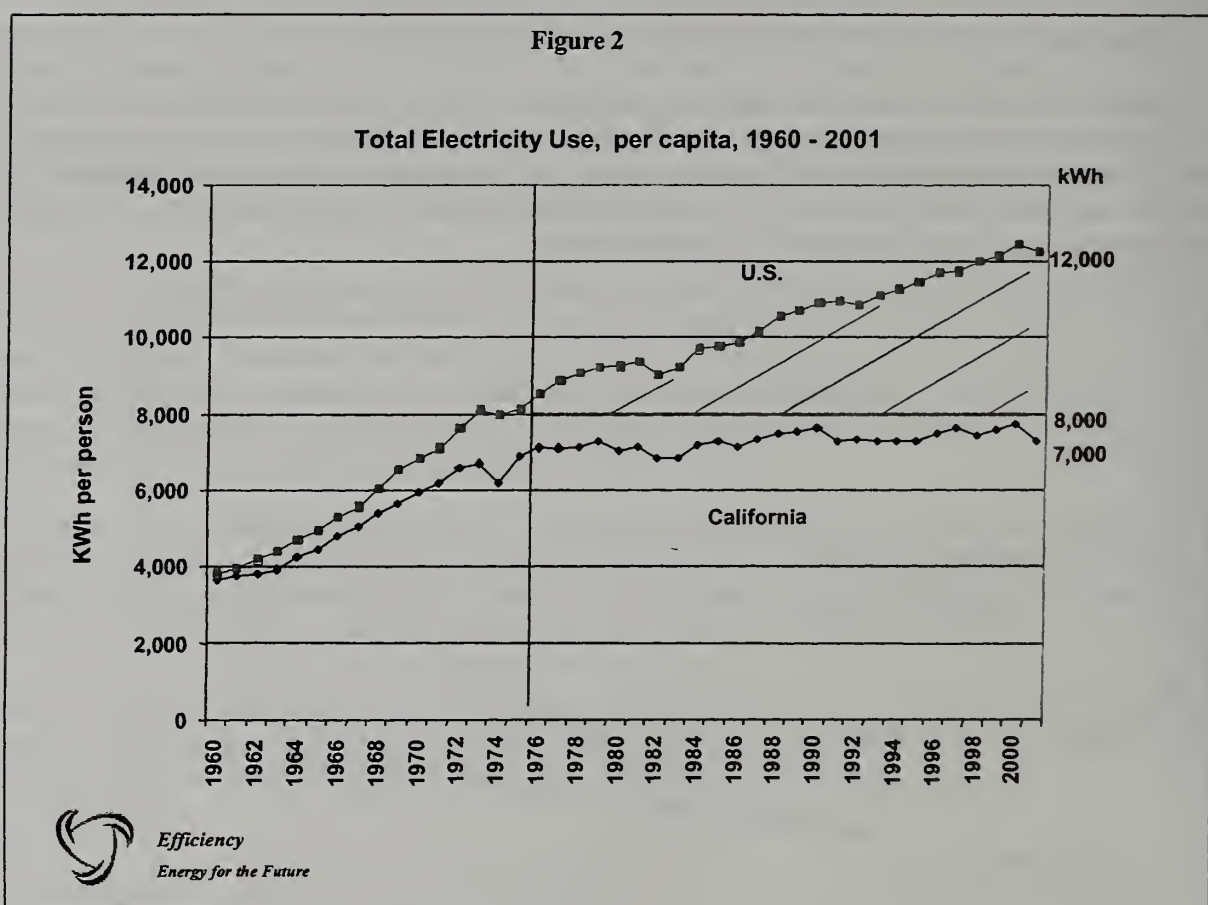
Since I am well known as an advocate of energy efficiency, I would like to say a few words about why I think efficiency is an important energy policy.

Figure 1 shows California peak demand (MW) from 1965 to the present for two projections: at five percent per year growth, which had been the trend up to 1975 when the Energy Commission was created, and at 2.2 per year, which is the actual growth rate since 1975. The difference is a staggering 65,000 MW, or about as much generating capacity as we have in California today.



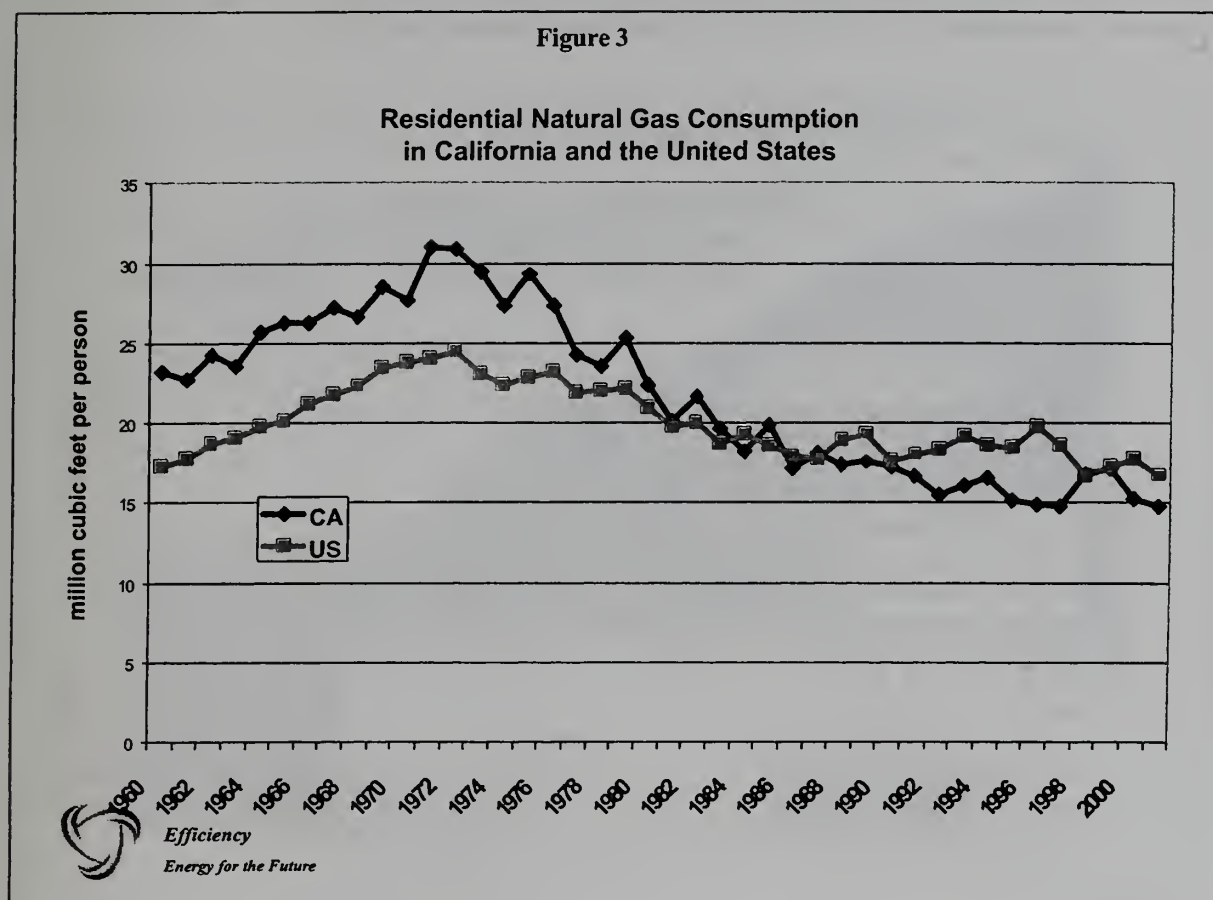
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Figure 2 compares total electricity use (kWh) per person since 1960 for the United States as a whole, and for California. While California is steadily less than the U.S. up to 1975 (which could be attributed to our milder climate), the two diverge significantly after 1975, with California being flat, and the U.S. continuing to grow at 1.5 percent per year (note that the U.S. projection would grow even faster if California were taken out of the U.S. total). If California had not taken the initiatives it did in building and appliance standards, and utility efficiency programs, our per capita energy use would be about 50 percent higher (12,000 kWh per year instead of 8,000 kWh). This means our annual electricity bill, which is about \$32 billion per year now, would be higher by about 50 percent, i.e. an additional \$16 billion per year.



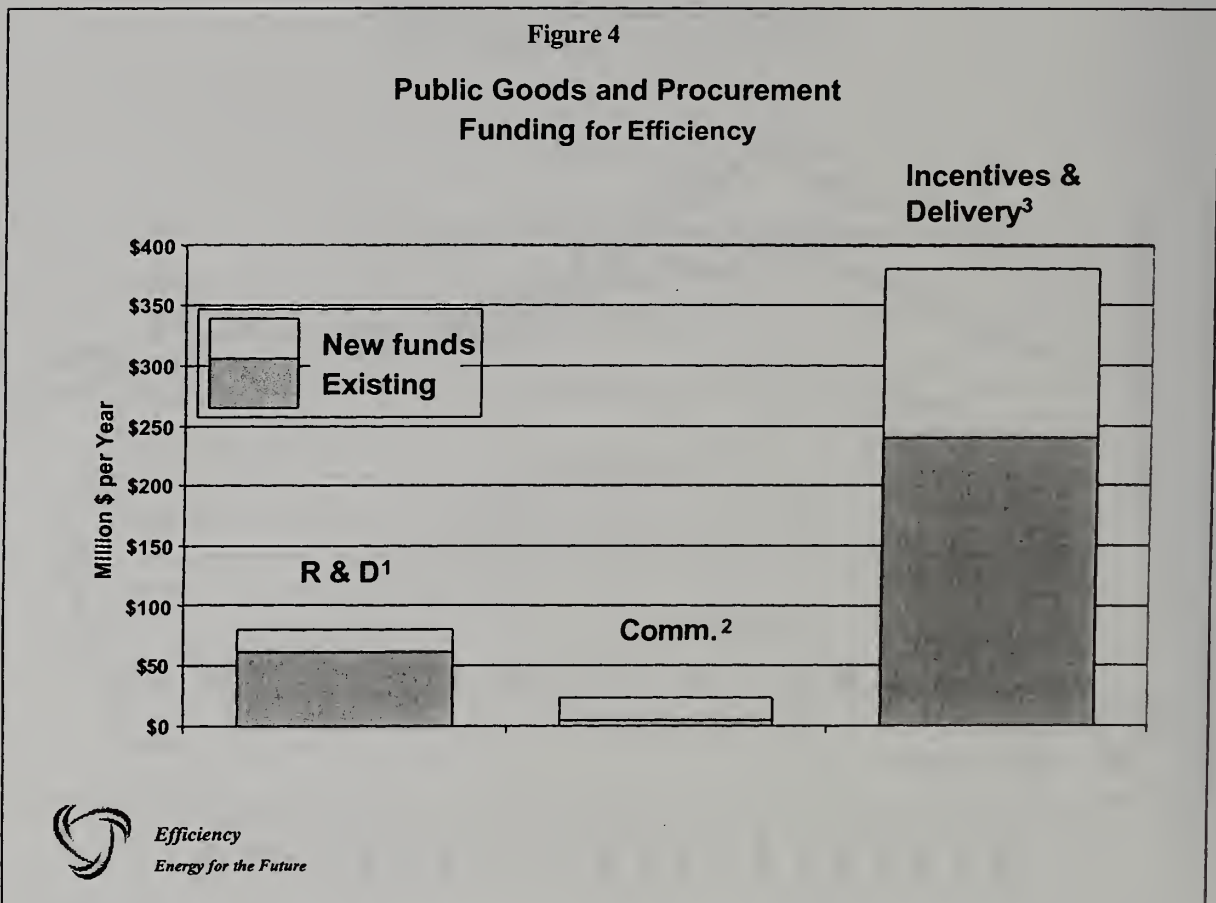
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Figure 3 shows residential (not total) natural gas use per person since 1960 for the United States as a whole, and for California. While California is higher than the U.S. up to the mid-1980s, the rate of improvement in energy efficiency is about double that of the U.S., and the California natural gas use per person today is about 50 percent of the use in 1973.



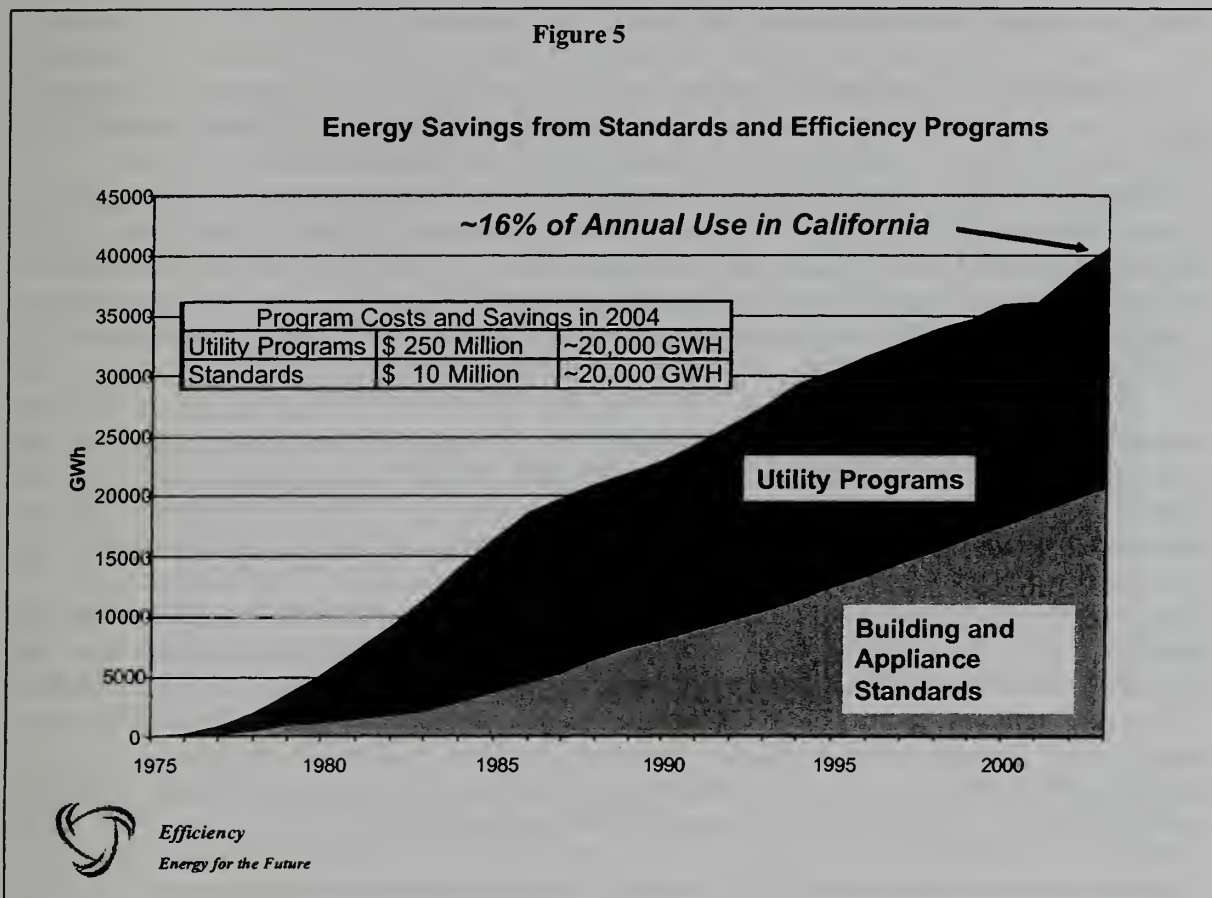
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Figure 4 shows funding for three of the four steps that we are using in California to achieve these dramatic results. The first bar is the \$62 million per year Public Interest Energy Research (PIER) Program, which is growing to \$96 million per year by 2009 with the addition of natural gas research funding. The second bar is "emerging technology" funding, which is administered by the CPUC as part of the utilities' energy efficiency programs, ramping up from today's \$4 million annually to \$25 million. The third bar is the utility funding for energy efficiency programs and efficiency procurement, that is now reaching about \$400 million per year. Not shown, but a major fourth step, is incorporation of new efficiency technologies in California's building and appliance efficiency standards.



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Figure 5 shows the cumulative savings from utility programs and Energy Commission standards. The dramatic results for these programs show that constant efforts over a long period of time change have huge impacts on our electricity and natural gas use. The costs of these programs, while not insignificant, are trivial compared to benefits we have enjoyed.



So I believe that efficiency is the cheapest and cleanest way to meet our energy needs, which is where I have dedicated my time, both earlier in my career at U.C. Berkeley, the Lawrence Berkeley National Laboratory, the U.S. Department of Energy, and now at the Energy Commission.

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Q1: What are your goals and objectives as a commissioner of the California Energy Commission? What are you proud to have accomplished during your first term? What do you hope to accomplish during your second term?

In my first term (2000 to 2004) I focused on two main areas: overseeing the Energy Commission's Public Interest Energy Research (PIER) Program, and development of effective efficiency standards and programs.

The PIER program was created at the Energy Commission by the Legislature as part of electric industry restructuring in 1998 (<http://www.energy.ca.gov/pier>), and funded at \$62 million per year. Last year the Legislature and the California Public Utilities Commission (CPUC) added natural gas research to the program, and the total funding is now \$84 million per year, growing to \$96 million per year by 2009. The PIER program is a unique opportunity for California to develop products and equipment that will lower both the costs of energy as well as the environmental impacts associated with energy production and use, while also continuing California's reputation for leading in technology and innovation.

When I joined the Energy Commission in 2000, the Energy Commission had just received a review by the PIER Independent Review Panel, that suggested the Commission needed to make improvements to the management of the program (<http://www.ccst.us/ccst/pubs/pier/>). Taking their recommendations to heart, the Energy Commission used an Interjurisdiction Exchange (IJE) to recruit Dr. Terry Surles from Lawrence Livermore National Laboratory to be the Director of the PIER program. When he left last year, we used the same IJE process to recruit Dr. Martha Krebs from Lawrence Berkeley National Laboratory, who had previously been the U.S. Department of Energy Assistant Secretary for Research, responsible for managing a \$3.5 billion per year budget. Bringing the expertise of these two leading research managers to the Energy Commission has enhanced the Energy Commission's ability to fulfill the IRP's mandate that PIER be a "world class research organization."

A second major change the Energy Commission made was to make research a separate Division within the Commission. This elevates the visibility of the program in terms of opportunities for new research initiatives, as well as the results.

There have been many research successes from the PIER program. Since air-conditioning is important to California's system reliability and electricity costs I will highlight a few projects. The first is the "hot-dry air-conditioning" project (<http://hdac-des-pier.com/>) which is seeking to develop an air-conditioner optimized for California's climate. National appliance efficiency standards are based on an average of national weather. But air-conditioners in the mild-humid southeast require very different characteristics than air-conditioners for the hot-dry southwest. We plan on using the results from this project to support our petition to the federal government for a waiver from federal standards (that preempt standards adopted by the Energy Commission), and to urge the federal government to change their standards to recognize at least three different climate zones.

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Another project is "cool roofs," which support the development of cool-colored roofing materials that can reduce air-conditioning loads by 5-10 percent at no cost (<http://eetd.lbl.gov/heatisland/CoolRoofs>). During the 2000-01 electricity crisis, the Energy Commission sponsored an incentive program to encourage building owners to reroof with cool materials when they do their regular roof maintenance. The Energy Commission incorporated requirements for cool roof materials in the 2005 nonresidential building energy efficiency standards. Additional research is being conducted for residential roofing materials, where color and material type are more important than for flat commercial buildings.

Another challenging research project is to develop "zero energy new homes" (ZENH). This project will promote the use of photovoltaic systems, but will also focus more broadly on developing commercially successful designs that optimize the efficiency of the homes rather than just using PV alone. That is, it does not make sense to generate PV power that costs about 30 cents per kWh generated, when efficiency opportunities to save energy at a cost of 5 to 10 cents are overlooked. ZENHs will use 25 percent less energy (gas and electric) than homes that meet California's residential building efficiency standards, use 75 percent less electricity, and use a maximum of 1 kW on-peak (typical homes use about 4 kW on-peak today). We will use the results of this project to develop cost-effective "Tier 2" building efficiency standards for homes that participate in the Governor's proposed "Solar Homes Initiative."

The IRP is just concluding its second review of the PIER program, which is due to be delivered to the Legislature this year, and I believe you will be pleased with the progress we have made in making the PIER research program a nationally and internationally recognized source of new energy technologies.

Efficiency has been my second area of focus. I arrived at the Energy Commission in March 2000, just as the electricity crisis was starting. At the direction of Governor and the Legislature, the Energy Commission conducted emergency rulemaking proceedings to tighten the building efficiency standards (2001) and appliance efficiency standards (2002). We also just completed a rulemaking covering 15 new products. Together, these new standards will save California about 3,000 MW and \$10 billion per decade of construction of homes, and sales of appliances.

In addition, I have focused on technologies and programs to make buildings more demand responsive to conditions on the electric system. As part of the package of programs developed in response to the crisis, California spent \$35 million to install 20,000 real-time meters on large buildings. This enabled the customers to participate in demand response programs, and led the way to a joint proceeding led by the CPUC in which California utilities will install advanced meters for all customers by the end of the decade (<http://www.cpuc.ca.gov/static/industry/electric/demand/index.htm>). We are also working with the CPUC to develop "critical peak pricing" tariffs for all customers. The Statewide Pricing Pilot (SPP) has shown that residential customers on CPP rates

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can reduce their load and their utility bill (<http://www.energy.ca.gov/demandresponse/documents/index.html#group3>).

Finally, I have worked closely with CPUC Commissioner Susan Kennedy on a new system for utility administration of energy efficiency programs. The new administration framework builds on successful utility experience and adds new mechanisms to measure and evaluate the results. The CPUC has also adopted goals for energy efficiency savings by utility programs, and has added funding for those programs through their new resource procurement requirements for investor-owned utilities.

In my second term I will continue my focus on research and efficiency. A key challenge that involves both research and implementation, especially for efficiency technologies, is solving the "valley of death" problem. This refers to the gap in support for new technologies that emerge from the lab but die before they reach the market. I am working with the CPUC to dramatically increase the utility "emerging technology" programs that look for new technologies and companies that will succeed if they get help with marketing and incentives to introduce their products to the market. The Energy Commission and utilities have formed the Emerging Technologies Coordinating Council (<http://www.ca-etcc.com/>), that meets regularly to look at PIER projects that are could be commercialized. Emerging technology programs, mentioned earlier, had been about \$4 million per year, but that will ramp up to \$25 million per year by 2010.

Another exciting area will be the results from the Demand Response Enabling Technology Development project (<http://ciee.ucop.edu/dretd/>). This project is working closely with university and industry researchers to accomplish "10 by 10" performance improvements—i.e., ten times the performance at one-tenth the cost. To accomplish this goal the project is working with the highest technology researchers, such as the Center for Information Technology in the Interest of Society (CITRIS) at U.C. Berkeley (<http://www.citris.berkeley.edu/>).

The PIER program will be conducting a major research solicitation in power supplies (meaning in this case power transformers, not generating plants) and electronics. This is very important because while we have made great progress in the "large" end uses in homes (e.g., air-conditioning, refrigerators, etc.), the small electronic uses (external power supplies, consumer audio-video equipment, etc.) have been growing rapidly. Surveys of homes show that "stand by" energy use is now about 10 percent of the energy use, and growing rapidly as consumers purchase larger TVs and other electronic products.

Helping utility efficiency programs achieve the goals adopted by the CPUC will be very important to California's energy future. I hope to increase the annual gain in energy efficiency from one half percent per year now, to one per cent per year. This means the graph of per capita electricity use in California (Figure 2) will actually decline rather than just be flat.

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One factor I hope to contribute to the utility programs will be demand response tariffs coupled with thermostats that can automatically respond to prices and signals. I am working with utilities and thermostat vendors now to see how this emerging market can be pushed with requirements for smart thermostats in our building efficiency standards and mass-buys by utilities.

Energy Efficiency

Q2: In what areas do you see the need to increase energy efficiency?

The area of greatest need for efficiency improvements is in transportation. For electricity and natural gas we have made great progress because of the integration of research, commercialization, incentives, and efficiency standards. We desperately need to create a similar process for transportation.

Pursuant to direction from the Legislature (AB 1493, Pavley), the California Air Resources Board adopted standards to control the greenhouse gas emissions from vehicles, which the Legislature will review this year. California should have a transportation research fund and program to facilitate meeting those standards, as well as improving the efficiency of other elements of the transportation system.

Q3: What timeline would you envision for the adoption of increased energy efficiency standards?

We will be conducting a rulemaking later this year for appliance efficiency standards for incandescent lamps (general service A lamps, reflector lamps, and metal halide lamps).

We revise our building efficiency standards every three years, consistent with the update process for all elements of the building codes. Our latest revision takes effect this year. We are conducting analysis now for the next update to the building efficiency standards. Those standards will be adopted in 2006, and take effect in 2008,

The next major opportunity for efficiency standards, which I will discuss below, is for appliance standards for many types of electronics products, such as set top boxes and TVs.

Gasoline and diesel supply and demand

Q4: Should the state take steps to bring the demand for transportation fuels into line with supply? Do you think in-state refining should be increased? Is so, how should this be accomplished?

A4: As part of its legislatively-directed *Integrated Energy Policy Report (IEPR)* process, the Energy Commission continues to study and report on California's transportation energy outlook, and identify appropriate state government actions to balance transportation fuel supply and demand. Results of our studies and related

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recommendations to date are presented in the Commission's *2003 IEPR* (submitted November 12, 2003, and available on our website at <http://www.energy.ca.gov/reports/100-03-019F.PDF>), and expanded on in the *2005 IEPR* currently in preparation to be submitted later this year (proceedings available on our website at http://www.energy.ca.gov/2005_energy_policy/index.html).

Briefly summarized, the major areas the Energy Commission believes need to be undertaken to improve California's transportation energy supply/demand outlook include:

- Adoption of quantified state goals for transportation energy demand reduction and for use of non-petroleum fuels, together with a concerted plan for achieving these goals
- Creation of a significant research program to support the development and application of advanced transportation energy technologies
- Advancement of a more aggressive national strategy for improvement of motor vehicle fuel efficiency
- Support for measures to foster greater national motor fuel supply fungibility and flexibility and to lessen neighboring states' dependence on California-sourced supplies
- Facilitate adequate transportation energy production, fuel importation, and fuel distribution infrastructure

Q5: Given that other countries such as China and India are now competing for gasoline refined abroad, how can California develop or maintain an adequate importation policy to make up the difference between in-state refining capacity and required imports?

A5: Economic growth in China, India, and other developing nations has increased world demand for petroleum fuels. The primary impact of this increased competition for petroleum is to raise the price of petroleum fuels worldwide, perhaps for the long-term.

The state can do little about international markets and world oil prices. We have no policies restricting or requiring certain levels or types of imports or exports, although we do require the cleanest end-use fuels and refinery operations in the world. For the foreseeable future, the state will be able to import enough crude oil and refined products to meet its needs, but the price will probably remain high. The most straightforward steps available to California to reduce the impacts of high world prices are those that reduce our demand for transportation energy and expand the range and flexibility of transportation energy supply options.

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Electricity supply

Q6: What are your views on what the state and, in particular, the Energy Commission should be doing to assure an adequate and affordable supply of electricity? Specifically, address the siting, permitting and construction aspects of supply and affordability.

California, particularly Southern California, faces supply adequacy issues this summer and in following summers if we encounter above average hot weather (1 in 10 temperature regime). The state needs to address this challenge in several ways including:

First, increase energy efficiency and demand response, the first item in the "loading order" adopted in the *Energy Action Plan* jointly adopted by Energy Commission and the California Public Utilities Commission. See my response to questions 1-3 above.

Second, increase development and deployment of new renewable generation resources (item 2 in the loading order). The Energy Commission is doing the following in this area. Building on the work of the 2003 *IEPR* and 2004 *IEPR Update*, the Energy Commission is identifying renewable-resource-related physical transmission system interconnection issues and solutions in the 2005 *IEPR* process that can be implemented in the near-term to ensure optimum development and interconnection of renewable resources. The Energy Commission is also identifying long-term and short-term transmission corridor needs and assessing institutional issues requiring state action to ensure needed access to new renewable resources both in-state and out of state. In addition, the Energy Commission is implementing a project that will facilitate and coordinate a development plan for exporting large quantities of geothermal power from Imperial Valley and wind power from the Tehachapi region to load centers in California.

Third, continue to license power plants, consistent with the Commission's environmental and economic review. The Commission's siting program has licensed over 22,200 MWs of new generating capacity since restructuring. Of that total over 8,700 MW are currently on line and another 5,000 MW are under construction. That still leaves, however, over 8,500 MW of approved projects that have not moved forward and remain stalled. The Energy Commission is providing support to the CPUC's procurement proceeding (providing analytical data as part of the 2005 *IEPR* regarding demand and the supply needs of the IOUs) which will provide a comprehensive assessment of the resources utilities plan to use to meet future loads. We believe this will lead to the IOUs signing contracts with power developers for additional supply resources. These contracts will allow developers to proceed with projects, including projects that the Energy Commission has licensed, but which have not yet begun construction. Currently, and for some time, it has generally not been possible for developers to finance power plant projects without a longer-term contract. To the extent that the CPUC's procurement process leads to contracts between the IOUs and developers, this will create a mechanism that will lead to building new power plants.

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The Energy Commission has been able to expeditiously review and permit over 50 power plant projects between 1999 and the present while at the same time ensuring protection of public health and safety and the environment. We will continue to expeditiously and efficiently review future applications. At this time we anticipate another upsurge in siting cases in the second half of calendar year 2005 as developers respond to the RFOs (request for offers) of PG&E and Edison.

Finally, while power plant permitting has proceeded smoothly at the Energy Commission, we remain concerned about transmission line permitting. We believe there has been an under-investment in transmission lines the past 20 years and that the state's transmission line system needs to be more robust to reduce market power; provide access to a wider array of economical generation, both in-state and out-of-state; and to help develop new sources of renewable power (e.g., Tehachapi wind power and the Salton Sea's geothermal resources). In the 2003 *IEPR*, the Energy Commission recommended the consolidation of the permitting of bulk transmission lines at the Energy Commission using our one-stop siting process as the model. SB 1565 (Bowen) passed in 2004 requires the Energy Commission to prepare, as part of the *IEPR*, a state strategic transmission line plan for submittal to the Governor and Legislature. We believe combining transmission line planning and transmission permitting with generation permitting will lead to improved efficiencies in the planning and permitting of key infrastructure, thereby increasing system reliability and improving system economics. This will also reduce state regulatory overlap, fragmentation, and costs.

Natural gas supplies

Q7: What should the state do to assure an adequate supply of natural gas for the generation of electricity, industrial use and household heating?

A7: As your letter noted, California has experienced very serious price spikes in our recent past. Due to the magnitude of the economic impact on all California natural gas and electricity consumers, California government, working with the natural gas industry, must take all cost-effective actions to avoid similar price spikes in the future.

Unfortunately, California's natural gas prices are closely tied to a single national price benchmark and our market prices are often driven upward by forces outside of California. For example, when the Northeast experienced an extreme cold spell in early 2004, demand for natural gas increased dramatically and prices soared. This Northeast price spike caused prices at the California border to also spike, although not as much, even though California's weather and core natural gas demand were very moderate at that time.

However, California can take additional action to help balance California's natural gas demand with its supply and help avoid any price spike caused by California. For example, the most cost-effective way to balance supply with demand is to maximize the state's efforts on energy efficiency, as discussed above.

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California can also develop alternative sources of supply to meet the same energy service, usually at lesser overall cost. For example, I also support the development of renewable energy resources to reduce the reliance upon natural gas fired-power plants. Similarly, I supported the establishment of our new natural gas R&D program that is currently developing technologies to both increase natural gas supplies, as well as use natural gas more efficiently.

Q8: Do you believe that the state is served by adequate supply pipelines for natural gas? If not, what would you suggest the state do?

A8: Our current natural gas infrastructure is one of several highlights in the state's overall energy portfolio. Following the price spikes of 2000/01, the state agencies, the state's natural gas IOUs, and the private natural gas industry, worked hard to increase California's infrastructure capacity. Additions have been made to both the interstate and intrastate pipeline capacity, and to the state's natural gas storage capacity. California currently enjoys an adequate surplus above the minimum requirements to meet its normal and peak projected needs. My only residual concern is determining if we have adequate capacity to handle an extreme peak demand.

The Energy Commission is working closely with the CPUC, other state agencies, relevant federal agencies, the natural gas IOUs, private companies in the natural gas industry, major natural gas consumers, and other stakeholders to periodically examine the state's needs for even more natural gas infrastructure. For example, we chair a monthly meeting of state agencies involved in natural gas (the Natural Gas Working Group) that monitors market conditions, consumers' needs, and infrastructure operations so that we are constantly prepared to advise the Governor and the Legislature if needed to avoid an impending crisis. We also hold joint technical public workshops on this specific topic and report this information through the *IEPR* proceeding. We believe that infrastructure investments are relatively inexpensive compared to the economic impact of a natural gas price spike that could be caused by inadequate infrastructure.

Our *Integrated Energy Policy Report* is also examining this very question with a longer term perspective. While we support energy efficiency and renewable energy investments as our top priority, we will still need to make some investments in our infrastructure. Our staff expect to issue their draft findings on this topic next month and I will be closely reviewing this in the context of our overall energy policy.

Q9: What are your views on the adequacy of natural gas storage sites in California? Do we need more storage? If so, where should these sites be located?

A9: As I mentioned above, our state has recently increased the physical capacity of its storage facilities. The most significant increase was at the private Wild Goose Storage Facility near Yuba City. We have also called attention to the operation of these storage facilities to ensure they are operated in a manner that maximizes the benefit to their

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owners and doesn't adversely impact the interests of all California natural gas consumers. For example, during the price spike of 2000/01, we found that private storage facilities were not filled in advance. Those private consumers were not able to fully withdraw stored gas but were required to purchase some of their natural gas from the interstate pipeline network, adding demand to that system and potentially increasing prices further. Since we highlighted this issue in our 2003 *IEPR*, the private storage facilities have been operated up to their full capacities.

Because California now imports about 85% of its natural gas, is at the end of a very long pipeline network, and now competes with all other major North American markets for its supply, storage facilities take on a critical role for California. These IOU and private facilities are necessary to ensure reliable deliveries of natural gas during peak demand periods. They are also very effective in moderating the impact of market price spikes. We have observed during times of spiking market prices that the California gas IOUs stop purchasing gas from the spot market and rely upon stored gas, thus shielding our residential and small commercial consumers from the impact of that market price spike. Parallel information regarding the private natural gas storage facility operations is confidential, but it appears the private consumers are now behaving in similar manner.

We are currently exploring with the CPUC if additional storage capacity is both needed and/or desirable. We keep a watchful watch on our key goals to ensure a reliable supply at reasonable prices, consistent with our state's environmental and public health and safety protection requirements. I currently believe that additional storage will be found to be cost-effective, but I will wait for the staff's technical findings before I make a final judgment on this matter. Fortunately, we have several opportunities in our state to locate additional storage capacity if needed, including expanding existing facilities. I am aware that several parties are currently considering such proposals.

Liquid natural gas

Q10: Do you believe that the safety of LNG transport, off-loading and regasification has been established?

A10: As of February 2005, there were four import terminals in the continental U.S. (plus one liquefaction facility in Alaska) and one in Puerto Rico. Another 41 import facilities are located elsewhere in the world. We have reviewed the history of this industry and regulations that govern its safety. We have prepared reports on this topic and posted them on our website. However, California needs to examine the safety of new facilities that might be located in California or Baja. Therefore, we look to reports recently issued by national experts to gain a better understanding of this issue.

The two major comprehensive reports that we rely on are the U.S. Department of Energy sponsored study by Sandia National Labs examining potential spills of LNG on the water and U.S Federal Energy Regulatory Commission sponsored study by a consultant examining potential spills of LNG on land. Both of these studies are posted

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on our Energy Commission website. We are also working closely with the U.S. Coast Guard to better understand LNG safety issues and potential mitigation measures.

In general, these studies show that risks and consequences from potential spills of LNG can be quantified and properly considered. However, the critical decision on this issue is made when governmental agencies consider an application to develop an LNG import terminal. Our many years of power plant permitting have shown that generic studies are helpful, but acceptability can only be established when a specific facility design is proposed at a specific site. Therefore, we look to the agencies currently conducting the review of the active LNG import terminal applications for the final determination on this issue.

Q11: If you believe safety has been established, where in the state could potential LNG sites be located?

A11: The state has not conducted a comprehensive siting study for potential LNG sites in over 25 years. Therefore, I'm not prepared to provide a technically supportable answer to that question. As you note above, we are seeing proposals from developers and agencies are examining if these sites are acceptable. In the short term, I would defer to the agencies conducting those reviews for their site specific determinations. If the Legislature desires a comprehensive LNG siting study, then we could organize such an effort if we had additional resources and adequate time. Such a study would be coordinated with all other appropriate federal, state, and local agencies.

Q12: What volume of LNG do you expect to be imported into the state in the future?


A12: The LNG import terminals that are being proposed for the West Coast (California and Baja) are in the range of 0.5 to 1.2 billion cubic feet of natural gas through put per day (bcf/d). If we use 1.0 bcf/d as a benchmark size, this represents approximately 16 % of California's annual average daily demand. This size is also in the same general size range as an interstate import gas pipeline.

At this point, we do not presume that a California LNG import terminal will be built and operated in our long term natural gas assessment. However, we are conducting sensitivity analysis to see what might happen if one or more LNG import terminals were built and operated. This analysis focuses only on the potential natural gas market price impacts and regional physical flow impacts. We expect to have that draft report available for public review by late summer. Therefore, at this point we are not predicting any specific level of LNG flowing into California. This statement should not be construed as either support for or opposition against any particular LNG project or LNG in general since it only reflects our conservative assumptions in future reliability analysis.

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The last five years have presented many energy challenges to California. I hope to continue to serve the state and Governor Schwarzenegger, and help assure we have reliable, affordable, and environmentally sound energy sources.

Sincerely,

A handwritten signature in cursive script that reads "Art Rosenfeld".

ARTHUR H. ROSENFELD, Ph.D.
Commissioner

cc: Members, Senate Rules Committee



Department of Pesticide Regulation



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Mary-Ann Warmerdam
Director

Arnold Schwarzenegger
Governor

May 24, 2005

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Ms. Sabelhaus:

Thank you for the opportunity to provide responses to the questions presented by Senator Perata in preparation for my June 1, 2005, confirmation hearing for the position of Director of the Department of Pesticide Regulation (DPR). The questions are restated below, followed by my responses. In addition, as requested, attached is an updated copy of my Statement of Economic Interests (Form 700).

General Background

1. *What are your goals and objectives as director of the Department of Pesticide Regulation (DPR)? What do you hope to accomplish during your tenure?*

I have characterized my goals as the "three Es"--protecting the environment, providing equitable treatment for Californians, and promoting a healthy economy. While some view these goals as contradictory, I believe that they are complimentary. In fact, DPR's statutory authority directs it to protect human health, the environment, and foster the use of reduced-risk pest management. However, I do acknowledge that balancing the three "Es" can be challenging, given a portfolio as complex as that held by DPR.

My overall objective is to create and promote a philosophy of "sustainability" at the Department, one that continues DPR's position as the nation's leader in pest management. Key to this is the development of more effective ways to measure our progress in real environmental improvement, rather than some dry statistic. For example, as part of its pesticide use reporting function, DPR generally quantifies pesticide use on a pounds-per-acre basis. This gives us no sense as to the qualitative effects on the state's environment. My goal is to establish a method by which we can credibly report on the amount of material used, but in a way that captures whether we are using more toxic or reduced-risk materials, and the environmental consequences of those choices.

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I also plan to reinvigorate and expand DPR's emphasis on reduced-risk pest management programs. We must support least-toxic alternatives and provide appropriate incentives at every level--from product registration to pest management decisions in farm fields and urban neighborhoods.

Finally, we must become more familiar with, and responsive to, the needs of all our stakeholders, both in rural and urban communities, who live and work around pesticides every day. DPR is already the premier state pesticide regulatory program in the U.S. My hope is to weave our statutory and regulatory fabric of environmental protection, sound science, and a concern for people and nature into a quilt in which every piece sustains another.

Pesticide Use in California

1. *Please describe what action, if any, the department is taking to reduce the use of chemicals classified as reproductive toxins, suspected carcinogens, and/or toxic air contaminants.*
2. *One of the missions of the department is to foster "reduced-risk pest management." How is it carrying out this mission? Is your department encouraging increased usage of integrated pest management?*

One of my first actions upon arriving at DPR was to address the current status of pesticide use and pesticide management in general. I share the concerns raised by those within and outside of DPR regarding the trends seen in the pesticide use report and what those trends might tell us from a public health, environmental, pest management, and economic sustainability standpoint. My goal is to have DPR play a leadership role in reducing the reliance on the highest-risk pesticides, while ensuring that California continues to be the world's agricultural leader and maintains a competitive product mix for urban/business consumers.

The cornerstone of my administration will be to foster the adoption of integrated pest management (IPM) throughout the agricultural and nonagricultural sectors. This includes using the best science for pest management decisionmaking, reducing potential risks from pesticide use by emphasizing ecologically based pest prevention, and preferring least-toxic pest management practices that include pesticide use, as necessary. This approach is a win for our environment, a win for human health (especially field workers and children), and a win for the economy.

To initiate this effort, I have formed a subcommittee of our Pest Management Advisory Committee and asked them to take a bold look at the path DPR should follow with respect to pest management in the decades ahead. Referred to as the "Pest Management in the 21st Century Subcommittee," this subcommittee reflects a wide spectrum of perspectives and constituents. I have directed them to propose recommendations that advance the adoption of

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sustainable agricultural and urban pest management within the constraints of the Department's existing resources. The subcommittee will submit their report to me this fall.

As we embark on reinventing DPR's role in pest management, I am proud of our ongoing efforts to reduce the use of the highest-risk pesticides and fulfill our mission on fostering IPM, which includes the following:

Pest Management Alliance Grants

DPR conducted a grant program from 1995 through 2002 that focused on finding alternatives to highly toxic pesticides classified as reproductive toxins or suspected carcinogens (Proposition 65), as well as organophosphates and carbamates. Unfortunately, the program was suspended due to funding constraints in 2003. I continue to seek alternate sources of funding for this successful program. The Pest Management Alliance (PMA) grants provided the resources and leadership needed to solve some of the pressing environmental and human health problems associated with producing California's high-quality farm products.

One project developed through PMA grants was the Sonoma County Grape Growers Association vineyard monitoring and pest management program. This public/private partnership encouraged the use of reduced-risk alternatives to a variety of pesticides--mancozeb, maneb, propargite, and fenbutatin-oxide (Vendex). The Sonoma County Grape Growers Association continues to practice this approach despite termination of DPR funding. This one example effectively characterizes the 44 alliance projects and 154 smaller grant projects in 38 counties funded by the PMA grants.

Despite the loss of funds for our own grant program, DPR continues to look for ways to solve environmental problems that can result from the use of some pesticides in both agricultural and urban settings. Most recently, DPR successfully obtained external grant funding for projects in almonds and stone fruits. This work has contributed to a substantial reduction in the application of organophosphate pesticide dormant sprays that have been found in surface waters in northern California. We also work closely with commodity groups, farmers, the University of California, schools, watershed groups, and others to develop, promote, and implement voluntary adoption of effective and less hazardous pest management practices. These partnerships help assure that chemical tools are available when needed and applied with the best technology to ensure that the material reaches only the target.

IPM Innovator Awards Program

Our IPM Innovator Awards Program promotes and honors leaders in IPM implementation throughout California. For many recipients, the award offers long-overdue acknowledgment of work conducted against technical and logistical obstacles and moral support, in a climate

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where broader implementation is encouraged. Recent recipients include: Earthbound Farm in Carmel, Fetzer Vineyards in Hopland, Green Gardener Certification Program in Santa Barbara, Napa Sustainable Winegrowing Group in Napa, and Robert Sinskey Vineyards in Napa.

Precaution through Sound Pest Management

A key aspect of DPR's Environmental Justice (EJ) Program is to advance a precautionary approach. Under our EJ pilot project in the San Joaquin Valley town of Parlier, we will assess the agricultural practices, pest pressures, and available pest management tools in crops surrounding a farming community. These factors will be considered while DPR and others gather ambient air monitoring data. I intend to foster a meaningful dialogue between agricultural and urban interests, listening especially to those voices that may not always be represented. Where there are opportunities to work closely with the grower community to further implement less-toxic pest management practices as part of an IPM system, DPR will assist by extending the work it has done on alternative practices and promoting alternative spray technologies. If airborne pesticides are shown to be a problem through our monitoring efforts, these practices may help reduce field worker and public exposure to airborne pesticides. Our scientists have already begun to analyze cropping systems and pest management practices around Parlier.

Partnerships with Urban Pest Managers

Reducing urban pesticide risks is also a major focus for DPR. Currently, we are collaborating with urban/agency partners in the following areas:

- **School IPM**

DPR's School IPM Program, mandated by the Healthy Schools Act (AB 2260, Chapter 817, Statutes of 2000), has already provided hands-on training for pest managers responsible for school grounds--362 of 974 California school districts have availed themselves of our training sessions. Trainees receive DPR's "IPM Guidebook for Schools" and continue to receive technical support directly from our scientists, visiting our highly regarded school IPM Web site, and reading our extensive outreach material. Annual surveys measure progress toward school adoption of IPM and assist the planning process. Current school IPM training is regional, with a train-the-trainer approach. We will soon offer follow-up training to support IPM adoption in selected school districts. Recently, our scientists completed several additional IPM resources--fact sheets on cockroaches and Argentine ants; and curricula on yellowjackets, burrowing rodents, structural pests, and landscape and turf weeds.

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- **Urban Runoff to Surface Water**

Household and other nonagricultural uses of pesticides continue to impair water quality in many of the state's urban waterways. Irrigation runoff from yards and other urban landscapes, as well as rainfall, transports pesticides from their application sites through storm drainage systems to urban creeks and estuaries.

DPR is collaborating with stakeholders as part of a comprehensive plan to improve water quality in these areas. We partner with regional water quality control boards, storm water management agencies, the University of California IPM Program, and consultants to identify the sources of pesticides in urban watersheds, better understand pest management decisionmaking in urban settings, and develop education and outreach strategies that effectively target urban pesticide users. The next steps will be to implement pilot outreach efforts.

- **Environmental Education**

DPR collaborated with the Resources Agency, Office of the Secretary for Education, State Board of Education, and the Department of Education to develop environmental principles and concepts that include IPM. From this process, a model curriculum will be designed to achieve standards-based education goals in the state's K-12 classrooms.

- **Sustainable Building**

DPR participates in a multiagency group, the Green Building Task Force, which is carrying out the Governor's Executive Order S-20-04. This summer, DPR will help the Collaborative for High Performance Schools train school staff throughout California on IPM.

3. *The department has the dual, and potentially conflicting, responsibilities of collecting assessments on pesticide sales to fund its activities, and regulating those same substances for the protection of public health and the environment. Do you believe the department can perform both functions without compromising either? How will you ensure that these apparently disparate functions are performed equally effectively?*

DPR's status as a "special fund" agency--dependent solely on the mill assessment and registrations to fund its activities--was not a role DPR sought. Rather, it reflects the state's fiscal realities. However, our reliance on fees is consistent with DPR's "polluter pays" (versus "fee for service") business model. Clearly, there is a legitimate reason to use the total mill assessment collected (presumably reflecting pesticide usage in the state) to fund

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the regulation of those products to protect the environment and public health. The higher volume of pesticides that are sold and used in the state, the more enforcement and regulatory effort is potentially required. It is also important to note that for staff or policymakers whose mission includes the protection of the environment and public health, the following constraints have been built into the system so the impact of their regulatory decisions on mill collection is simply not a primary consideration:

- Recognizing the legitimate concerns over DPR's dual role, the Mill Assessment Branch was created in 2003 and placed within our Administrative Services Division, effectively establishing a firewall between the Mill Assessment Branch and our program branches.
- If the increase in pesticide sales in California results in a substantial increase in funds via the increased mill assessments that is not reflected in an increase in authorized expenditures to conduct regulatory activity through the annual Budget Act, the provisions of Food and Agricultural Code section 12841(f)(1)(D) requires a reduction in the mill rate. Thus, an increase in funding resulting from increased collection of mill must be accompanied by more regulatory activity or result in the decrease of funding from a mill rate reduction.
- The effect of any regulatory decision on *total* pesticide sales is difficult to determine. Regulatory decisions concerning the registration or usage of a particular product or active ingredient do not necessarily have an impact on *total* pesticide sales and use in the state. The decision to register a product may simply result in the continued use of another pesticide that has met the regulatory requirements, and, conversely, registration of a new product may simply reduce the usage of the pesticide it is meant to replace. Similarly, if regulation of the use of particular pesticide products discourages their use in the state, the result may be the increase of alternatives that may pose fewer environmental and/or compliance problems. The total amount of pesticide use in the state is dependant on a myriad of factors totally apart from DPR's regulatory actions--weather, crop mix, acreage under cultivation, the sudden introduction or increase of a particular pest, consumer buying habits, changes in commercial and industrial use practices, etc. The result of any particular regulatory decision on the *total* pesticide usage is unclear at best.
- This theoretical conflict assumes that the desire to increase usage and mill revenue would trump health and safety concerns in regulatory decisionmaking. This concern does not reflect the integrity and seriousness with which the Department undertakes its obligation to fulfill its statutory mission--protection of the environment and public health, and foster the use of reduced-risk pesticides. In fact, in addition to working diligently to mitigate the effects of various pesticides and restricting the use of others, the Department has a record of using significant resources to support the reduced use of pesticides through the

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encouragement of IPM techniques. That goal continues to hold a prominent place in the Department's policy direction.

Reimbursing Medical Costs of Persons Injured in Pesticide Incidents

1. *Is DPR involved, or being consulted, in the new standards and protocols for pesticide exposure emergency response? If so, please describe your role in this process.*

Yes, the Chief of DPR's Enforcement Branch is participating on the California Environmental Protection Agency's (Cal/EPA's) implementation team charged with developing the minimum standard pesticide drift protocols for the purpose of amending Certified Unified Program Agency (CUPA) area emergency response plans per SB 391 (Chapter 913, Statutes of 2004). The team is led by Cal/EPA and, in addition to DPR's representative, also includes a representative from Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA), Shasta County Agricultural Commissioner's (CAC's) office, Orange County Fire/LEPC Region 1, Bakersfield City Fire, Office of Emergency Services, Kern County CUPA, and Tulare County Environmental Health.

DPR is providing technical expertise to the team as it develops the protocols. We believe our experience will aid the committee in better understanding the history behind the legislation and the circumstances regarding past pesticide drift cases in the San Joaquin Valley, as well as from other parts of the state. The team meets biweekly and expects to have draft protocols completed in June or early July. The final protocols are expected by August 31, at which time the CUPAs can begin amending their area plans. The team plans to provide an opportunity for community/stakeholder comment once the initial draft has been developed.

2. *How does the implementation of SB 391 affect the department's responsibilities to protect public health and the environment from pesticide exposure? Are there any specific actions the department will take to better harmonize its programs with the provisions of the new law?*

First, the legislation sends an important message to those who violate the law and injure people (in the nonoccupational setting) by making them accountable for the medical costs. This responsibility brings home the importance of following DPR's regulatory requirements. Additionally, the implementation of SB 391 will affect the manner in which DPR uses enforcement tools to protect public health from pesticide misuse. Under SB 391, CACs can assess a separate violation for each person made ill by a pesticide violation. This will potentially increase the severity of proposed penalty actions. DPR issued an initial guidance document in January 2005. We are in the process of developing a comprehensive guidance document, with completion expected by July 2005.

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Again, the development of our specific guidance to implement this bill will send a message to the regulated community and our local regulators (CACs) that DPR considers drift and pesticide misuse a serious matter. DPR, in protecting public health and the environment, will ensure that CACs take appropriate enforcement action. This new remedy for those in the nonoccupational setting augments the country's most robust program to protect individuals in the workplace (not affected by SB 391, but covered under worker's compensation [Occupational Safety and Health Administration]).

Farm Worker Safety

1. *What if anything has the DPR done and what can it do to improve its reporting system for reporting farm worker pesticide poisoning?*

The complexities and institutional barriers that exist with farmworker illness reporting continue to challenge our ability to acquire accurate information. Despite these hurdles, I will strive to improve the reporting compliance and completeness of DPR's Pesticide Illness Surveillance Program (PISP) from both the agricultural and nonagricultural sectors. PISP does capture the major trends and safety problems associated with the use of pesticides, especially as they relate to farmworkers in the state's farm fields. Unfortunately, PISP can miss pesticide-related illnesses due to a number of factors: (1) people may not consult physicians after a pesticide illness episode, especially if exposed to pesticides outside of a workplace environment; (2) physicians may not recognize that their patients are suffering from pesticide exposure or otherwise feel constrained (e.g. an undocumented worker); or (3) physicians may be unaware of the reporting requirement.

Over the years, DPR has undertaken several projects to improve physician reporting of pesticide-related illnesses and injuries. I would like to revisit those approaches that have worked, as well as some others. I believe that through education of physicians, as well as enforcement of the requirements against retaliation, we can make improvements to reports of pesticide illnesses.

- In 1994, DPR and OEHHA initiated a joint effort to improve physician familiarity and compliance with the reporting requirement. DPR sent summaries of the requirements for reporting pesticide-related conditions to all physicians who held active California medical licenses. In 1995 and 1996, DPR sent letters to any physician not properly reporting a pesticide illness. The letters explained the proper reporting requirements. A total of 1,371 letters were sent to 996 different doctors by the end of 1996. OEHHA also conducted physician outreach sessions during this period. Orange, Riverside, and Stanislaus counties were selected as primary locations for outreach because they had especially poor records of direct reporting in compliance with the reporting law. This effort increased physician

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reporting to more than 20 percent of cases, from a low of 12 to 13 percent in 1992 and 1993, respectively.

- In 2001-02, with grant funding from the U.S. Environmental Protection Agency (U.S. EPA), DPR conducted two pilot projects and one full-scale project with the California Poison Control System (CPCS). During this period, CPCS specialists offered to report potential pesticide-related cases on the physicians' behalf, thereby assisting physicians in complying with the mandatory reporting requirements for pesticide exposures. Under the full-scale project, CPCS transmitted 876 case reports. These reports included: 88 (93 percent) of the 95 reports received on the day of the event, 315 (93 percent) of the 340 reported the day after, and 745 (85 percent) of the 894 reported within one week of occurrence. The average time from occurrence to notification was six days for cases CPCS helped report. By contrast, the average time from occurrence to notification of cases identified through workers' compensation records was 145 days.
- Since 2002, DPR has carried out a physician feedback program. DPR received criticism from reporting physicians that they never heard anything about the cases they reported. When the annual illness summary report is released, DPR sends a letter to physicians who properly reported cases with information about the availability of the annual report and an offer to prepare a custom query of the database for cases in their county. DPR receives 60-80 responses from physicians each year.
- In the fall of 2004, DPR began participating in a project with OEHHA to improve the timeliness, quality, and completeness of illness reporting. Funded by a \$750,000 grant from U.S. EPA, the project will seek to reestablish a working relationship with CPCS, train physicians to better recognize and report suspected pesticide illnesses, enhance reporting with Web-based tools, and create a Web-based system for pesticide incident investigation in cooperation with the CACs.

Prospectively, I am looking at the following measures to enhance our efforts to improve farmworker reporting of pesticide illnesses:

- Continue our collaboration with OEHHA on the Web-based reporting system.
- Work with the Legislature and others to secure a permanent funding source to maintain the CPCS assistance to physicians in meeting the reporting requirements. Our project demonstrated that CPCS-mediated reports increased our case ascertainment significantly. The U.S. EPA grant mentioned above will provide CPCS with some funding, but is not a permanent resource.

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- The pesticide illness reporting statute (Health and Safety Code section 105200) gives enforcement of the provision to the Department of Industrial Relations. Improved reporting will occur through strong enforcement to ensure that physicians do report pesticide illnesses. We would be interested in working with the Department of Industrial Relations to enhance enforcement.
- Migrant health clinic staff have reported to DPR that retaliation against farmworkers who report safety problems is one reason the clinics do not report illnesses. Strong enforcement action against retaliation is needed to ensure farmworkers are comfortable reporting health and safety problems.

Methyl Bromide

1. *Has the department performed its own scientific evaluation of safe levels for methyl bromide? If so, what do those evaluation show is a safe level for the fumigant?*

Yes, the Department's scientists conducted their own thorough scientific evaluation of the safe levels for methyl bromide. DPR toxicologists reviewed the entire toxicology database to determine the appropriate studies to use as the basis to calculate the human safe levels. This was presented in the risk characterization document. This document was reviewed by OEHHHA, which concurred with these proposed safe levels. In fact, the acute and chronic values mirror the reference exposure levels for methyl bromide prepared by OEHHHA and reviewed by the Scientific Review Panel (SRP). DPR undertook an external peer review by a scientific panel of the National Academy of Sciences (NAS). One of the questions it was specifically asked to address was the validity of the DPR-calculated safe levels. The NAS panel concurred with the conclusions of the DPR toxicologists.

One unique aspect of DPR's risk assessments involves the calculation of a subchronic or seasonal value. No other state agency determines a value for an intermediate duration, but due to the types of pesticide exposures, having additional values provides additional protection. The subchronic value for methyl bromide has been at the source of considerable scientific uncertainty, debate, and controversy. The NAS panel had reservations about the study used to determine the subchronic safe level. There was some uncertainty as to whether the effect observed was related to treatment with methyl bromide. The NAS panel accepted DPR's staff recommendation, but also felt the estimated level was probably overly conservative and recommended that a new study be conducted. The recommended subchronic value was the same--1 part per billion--as the chronic (lifetime) value. DPR proceeded to consider risk management measures using staff recommendations.

The registrants decided to conduct a new study with more thorough evaluations. After the study was completed, DPR toxicologists conducted an in-depth review of the study. DPR

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scientists concluded that the new study provided a stronger basis for the subchronic human safe level than the previous study. Recognizing that the use of this new data would result in raising the subchronic human safe level from 1 part per billion to 9 parts per billion, DPR scientists solicited the opinions of external reviewers. These reviewers included scientists at the University of California and from U.S. EPA, including Dr. Virginia Moser, a recognized expert on the type of study in discussion. They concurred with the DPR toxicologist's conclusion.

DPR also received comments from the registrants and OEHHA scientists. The registrants' scientists concluded that, based on the new study, the subchronic human safe level should be increased from 1 part per billion to 36 parts per billion. On the other hand, OEHHA scientists concluded that the human safe level of 1 part per billion should be retained. DPR also held a public workshop to solicit public comments on DPR staff recommendations.

After considering all the external scientists' evaluations and the full toxicity database, DPR toxicologists concluded that the subchronic safe human level of 9 parts per billion had the most scientifically sound basis. This conclusion was then provided to DPR management for use in their risk management decisions. In summary, the DPR scientific evaluation of methyl bromide was:

- An open process with input from DPR scientists and external reviews. All documents were available to the public and DPR conducted workshops to seek input from stakeholders.
 - Independent of risk management. The scientists conducted an independent evaluation of the data and determination of the human safe level.
 - Dynamic. The human safe level was reevaluated as new data became available.
2. *Under the Montreal Protocol, use of methyl bromide is to be almost entirely phased out in 2005. What steps, if any, is the department taking to implement this requirement? Is the department evaluating and recommending any replacements for methyl bromide?*

DPR does not have any role in the amendments to the federal Clean Air Act that are intended to implement the international treaty, e.g., the Montreal Protocol, on the phase out of ozone-depleting compounds. U.S. EPA is the sole implementing agent of the Clean Air Act language pertaining to methyl bromide phase out.

DPR is not recommending any specific replacements to methyl bromide. Our efforts are focused on completing risk assessments for the proposed replacements to methyl bromide with the objective of ensuring that these uses will not pose a health risk and that the

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agricultural industry will have consistent rules. In addition, we are evaluating products containing new active ingredients, such as methyl iodide, as registrants developing uses apply for registration. (Note: DPR has registered one new microbial pesticide, a virus for Indian meal moth that is a pest in stored walnuts and raisins, that may replace the post-harvest use of methyl bromide.)

Toxic Air Contaminant Risk Assessment

1. *Assuming the information above is correct, why is the department so slow in completing risk assessments for toxic air contaminants? What steps will you take to accelerate the assessment of pesticide toxic air contaminants?*

I want to make sure that people in California are not exposed to unsafe levels of pesticides. I was pleased to discover that past risk assessments by DPR have accounted for over 70 percent of the pounds of agricultural pesticides applied in California. Additionally, the collaboration with the Air Resources Board on ambient air monitoring programs continues to provide critical data for our review.

I would like to begin by correcting some of the statements about the universe of pesticides subject to risk assessment and the toxic air contaminant (TAC) process. The cited "900 pesticide ingredients"¹ in the introductory paragraph of the letter from Senator Perata suggests that all active ingredients contained in registered pesticides must have assessments conducted under the TAC Act. This interpretation of this Act is inaccurate. The Act [Food and Agricultural Code section 14022 (a)] requires DPR to "evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health." This law does not require DPR to assess "all pesticides." However, it should be noted that the Birth Defect Prevention Act of 1984 does require DPR to assess the health effects of all pesticide active ingredients contained in registered pesticides, determine the significance of adverse effects, and take appropriate regulatory action. The Birth Defect Prevention Act represents a mandate parallel to the TAC Act. Additionally, DPR is mandated to assess the dietary risks of pesticides used on commodities. Given the resources available to DPR, it

¹ There are approximately 900 active ingredients contained in 12,000 pesticide products registered in California. These active ingredients include not only the traditional insecticides, fungicides, herbicides, and rodenticides, but also sanitizers and disinfectants, repellants, microbials, adjuvants, pheromones, etc. Many of these active ingredients will not be subject to emission into the ambient air, either because of their characteristics (physical/chemical properties), or because their pattern of use reduces the likelihood of there being measurable concentrations in ambient air. Additionally, not all pesticide active ingredients exhibit toxicity characteristics that would present a potential hazard to human health if present in ambient air. Pheromones that are registered as pesticides represent a good example, as well as food-grade materials such as garlic oil.

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balances these competing mandates and produces five-to-six comprehensive risk assessments per year that examine all relevant routes of exposure.

Four pesticide active ingredients--ethyl parathion, methyl parathion, DEF, and methyl isothiocyanate--have been designated by DPR, in regulation, as TACs pursuant to the above health evaluation process involving the SRP. DPR is ready to bring its TAC health evaluation on sulfuryl fluoride before the SRP and is slated for the SRP's June 2005 agenda. DPR is nearing completion on its health assessments for methidathion and chloropicrin, and would like to present the results to the SRP within a year.

Another 37 chemicals have been designated by DPR, in regulation, as TACs based on their identification by U.S. EPA as "hazardous air pollutants" (HAPs). Risk assessments have been completed on five of these chemicals--1,3-dichloropropene, dichlorvos, methyl bromide, pentachlorophenol, and propoxur--and, in many cases, ambient air mitigation measures have been implemented as a result. Risk assessments are underway on two additional HAP TACs--carbaryl and mancozeb. By comparison, the Air Resources Board has listed 20 chemicals through the TAC process, and administratively listed the 187 HAP TACs.

Risk assessments are also underway on several pesticide active ingredients that may have potential ambient air exposures, in addition to other routes of exposure, including: acephate, carbaryl, carbofuran, chloropicrin, chlorothalonil, cyfluthrin, endosulfan, imidacloprid, indoxacarb, methamidophos, methyl iodide (currently under consideration for registration), orthophenylphenol, propargite, simazine, etc. It is anticipated that some of these risk assessments may lead to TAC health evaluations.

With respect to the steps being taken to accelerate the assessment of TACs, DPR recently changed the process to improve the transparency of its selection of active ingredients for risk assessment initiation. This process will apply to all of the mandates governing DPR's risk assessment activities. It allows a more rational approach that assures that the Department's limited resources will be utilized in a manner to maximize the benefit to public health and safety based on addressing the most serious hazards first, regardless of the direction from which the danger arises. DPR proposed a list of nine active ingredients for risk assessment initiation, provided opportunity for public comment, and will initiate the assessments on this prioritized list once the staff resources are available, upon completion of ongoing assessments. Of those nine, four of the first five active ingredients will likely lead to TAC health evaluations because of their physical/chemical characteristics. Once DPR completes its draft health assessments, its completion of the TAC process is dependent on the SRP's availability to consider DPR's health assessments.

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2. *Scientific observers generally believe that the activity of assessing risk should be functionally separate from the activity of regulating and managing risk. This is the case for most activities in CAL-EPA where OEHHHA performs the risk assessment and the other boards and departments regulate that risk. DPR is the notable exception to that rule.*

Some scientific observers do assert functional separation can only be achieved through a physical separation of risk assessment from risk management between agencies. However, other scientific observers, while believing that risk assessment and risk management should be conceptually distinct, also state that they should not be organizationally separate. DPR's current organization within Cal/EPA reflects the latter and is consistent with both the federal organization of the risk function and the recommendations of the NAS.² (U.S. EPA's Office of Pesticide Programs is similarly responsible for all aspects of pesticide regulation, including toxicity evaluation, exposure evaluation, risk assessment, and risk management.) In addition and in contrast to most other Cal/EPA entities, DPR is required to conduct multimedia evaluations and implement multimedia regulation. DPR maintains an extensive mandated scientific database on all aspects of pesticide toxicity, use, and regulation.

DPR also maintains a clear distinction between risk assessment and risk management activities. Risk assessments, in the form of risk characterization documents, are developed and finalized by DPR staff scientists. DPR management makes the risk management decisions.

² In 1983, the NAS issued a report entitled "*Risk Assessment in the Federal Government: Managing the Process.*" The NAS committee recommended that "regulatory agencies take steps to establish and maintain a clear *conceptual distinction* (emphasis added) between assessment of risks and consideration of risk management alternatives; that is, the scientific findings and policy judgments embodied in risk assessments should be explicitly distinguished from the political, economic, and technical considerations that influence the design and choice of regulatory strategies." However, NAS clearly differentiated between the need for the conceptual distinction and the need for organizational separation, pointing out "The importance of distinguishing between risk assessment and risk management does not imply that they should be isolated from each other; in practice they interact, and communication in both directions is desirable and should not be disrupted. Institutional separation would surely reduce the responsiveness of the risk assessment process . . . On balance, the committee believes that transfer of risk assessment functions to an organization separate from the regulatory agencies is not appropriate" (emphasis added). NAS went on to state, "Organizational separation has several important drawbacks that are likely to be intensified with increasing degrees of separation." Subsequent national advisory committees have supported the wisdom of these recommendations. These committees or their reports have included the 1994 NAS report "*Science and Judgment in Risk Assessment*" by the Committee on Risk Assessment of Hazardous Air Pollutants, the 1996 NAS report "*Understanding Risk: Informing Decisions in a Democratic Society*," and the 1997 report of the Presidential/Congressional Commission on Risk Assessment and Risk Management.

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3. *Do you believe there (is) a "conflict of interest" in having the department perform both risk assessment and risk management functions for pesticides? What specific steps have you taken to ensure the functional separation between risk assessment and risk management?*

As noted above, we believe that DPR maintains a clear separation between risk assessment and risk management functions, and has diligently tried to further bolster the firewall between the two over the past five years. DPR scientists develop risk assessments, in the form of risk characterization documents. The assessment of the potential risks to human health from the pesticides under consideration is the only focus of the risk characterization documents. Not only are risk management considerations not a part of the risk characterization document, but DPR scientists do not play a role in developing risk management or mitigation measures. Once the risk characterization document is completed by DPR scientists, and undergoes review by OEHHA, and external scientists as necessary, it is provided to DPR management. It is at that point that a decision is made regarding the need for additional risk management.

Enforcement

1. *What is your assessment of DPR's enforcement of pesticide laws? Are you taking any specific actions to strengthen DPR's enforcement role? What steps has DPR taken to track multiple and repeat violations of the state's environment and public health laws by the same individual or firm?*

I am firmly committed to strengthening our enforcement of pesticide laws. I fully understand that failing to follow pesticide rules can cause harm and injury. The unfortunate tragedies that have plagued workers and communities by those who failed to follow the rules must become a relic of the past. I am convinced that by sending a clear message to the regulated community that rules must be followed, and backing up those words with consistent actions, will create a more equitable future.

DPR and the CACs have generally enforced California's pesticide laws fairly and consistently since the administrative fine process was put in place in the mid-1980s. With that said, however, I do believe it is now necessary for improvements to strengthen our enforcement responses and ensure appropriate and consistent actions are taken throughout the state. We have immediately begun to implement policy changes to move in this direction. This is also consistent with the Administration's priority to improve enforcement action more broadly across state government--a commitment I personally share. With that in mind, DPR is undertaking the following:

- Strengthening DPR's enforcement guidelines. This need was identified by DPR and also by our federal (U.S. EPA) and local (CACs) enforcement partners. To effect this improvement, a working group has been convened to revise and strengthen these

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guidelines. They will also incorporate the increased fine authority recently granted to DPR by the State Legislature. (The maximum civil penalty authority is now \$5,000.)

- Tracking violations. I believe that tracking those who are habitual offenders should be part of our enforcement surveillance scheme and considered in determining the size of subsequent penalties. We identified a need to strengthen and improve our enforcement action database. We have been working with CACs and the Structural Pest Control Board to collect this data and establish procedures to strengthen the utility of the data. This database, together with the inspection tracking database, is critical for tracking violation histories of individual firms and detecting repeat offenders. We are requesting additional discretionary funding from U.S. EPA for fiscal year 2005/06 to outsource our need to improve our database and allow us to develop a performance measure for repeat violators. This database will be used for reviewing compliance history of pest control businesses and, when appropriate, pursuing state enforcement licensing actions. It will also help us to evaluate the performance level of CACs when they take actions against repeat violators.
- Improving DPR oversight. In October 2004, DPR issued a policy letter to the CACs that outlines a new direction in DPR's oversight responsibility for providing guidance priority planning and program performance evaluation of the local CAC enforcement programs (see attached Enforcement Letter 2004-23). This guidance focuses on three core areas-- proper permitting and site evaluation, risk-based compliance monitoring, and appropriate enforcement responses. CAC enforcement programs will be regularly evaluated on these three critical areas.

The regulations governing how mill assessment funds are distributed to CACs will be amended by mid-summer. The new regulations will provide DPR with the authority to direct mill assessment funds based on where pesticide enforcement priorities lie.

- Involving district attorneys. In December 2004, DPR directed all CACs to consult with district attorneys for any pesticide violations that meet its priority criteria or are of a serious nature. This is to ensure criminal prosecution is considered if the violation warrants.

Mill Assessments

1. *Please provide the department's current estimate of the under-collection of mill assessments from retailers. Has DPR performed an estimate of the amount of the under-collection from past years?*

DPR recently completed an audit of one consumer-use pesticide retailer that identified six nonlicensed suppliers providing pesticides to this retailer. Because it could not be determined

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whether these suppliers had paid mill assessment, DPR initiated audits of these suppliers that, in turn, have lead to an additional seven audits, for a total of 13 currently underway. In addition to these supplier audits, DPR has initiated audits of two other large retail chains.

Regarding an estimate of undercollected mill assessment on the sales of consumer-use pesticides, DPR must rely on the results of the single audit completed. The following summarizes our estimates based on this audit:

Total Mill Assessment Collected	Mill Assessment Collected on Nonagricultural Pesticides	Estimated Additional Mill Collections
2003/04 The total registrant mill fees paid on <u>all</u> products.	Fifty percent of all mill fees paid are for nonagricultural products sales.	An audit found that six out of 26 vendors that were supplying the retailer were not paying mill. This equates to mill fees not being paid on 23 percent of the pesticides sold.
\$34*	\$17*	\$3.9*

• dollars in millions

With respect to historical undercollection from the retail sector, DPR has not had the resources to look at past years, beyond those referenced above.

2. *What steps are you taking to address the problem of the under-collection and the loss of revenue to the state?*

DPR is sponsoring legislation (Matthews, AB 1011) that will close a loophole that has allowed suppliers of consumer-use pesticides to circumvent mill assessment and pesticide sales reporting requirements. Through our auditing efforts described above, we have determined that the most efficient and effective means to ensure the mill assessment is paid is to require that all persons who first sell pesticides into this state become licensed by DPR. If adopted, this legislation will mirror the requirements currently in place that mandate all sellers of agricultural use pesticides to be licensed. The proposed legislation simply expands the current broker licensing requirements to encompass the sellers of consumer-use pesticides. In addition, licensing these sellers will increase compliance with other applicable pesticide laws and regulations, as the licensees become responsible for conforming.

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Inert Ingredients

1. *What effort does DPR take to understand the potential hazards posed by inert ingredients in pesticides?*

The term "inert ingredients" applies to components of a pesticide product's formulation that does not exert pesticidal activity. The term is defined in federal regulations (Title 40, Code of Federal Regulations section 152.3(m): "Inert ingredient means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product." The term is frequently misinterpreted to imply that formulation components are benign. Because of the confusion over the term, U.S. EPA has agreed to allow pesticide registrants to use the term "other ingredients" on pesticide labels on a voluntary basis.

For each pesticide product for which registration is sought, DPR receives and reviews a battery of acute toxicology studies conducted on the formulated pesticide product. These studies are intended to characterize the oral, dermal, and ocular toxicity and irritation potential of a *formulated* pesticide product, not just the active ingredient. Along with the toxicity studies, DPR scientists evaluate pesticide product labeling to determine if the signal words "Caution," "Warning," or "Danger" and associated precautionary statements appropriately characterize the acute toxicity of the product and precautions that must be taken to avoid the hazard. DPR uses the standards of U.S. EPA in determining appropriateness of the label language. It is not uncommon for the formulated product to have more toxicity or irritation potential than the active ingredient, due to a solvent or other formulation component.

DPR has not conducted an extensive health effects data call-in for inert ingredients as it has done for pesticide active ingredients under the Birth Defect Prevention Act of 1984. DPR has not had the resources to undertake such an effort, and its authority to do so remains uncertain. U.S. EPA has undertaken a comprehensive review of health effects data for those inert ingredients that are used in pesticide products on agricultural commodities for food or feed, under the Food Quality Protection Act requirements to reassess all tolerances.

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I look forward to discussing these issues with you. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, reading "Mary-Ann Warmerdam", followed by a horizontal line.

Mary-Ann Warmerdam
Director
(916) 445-4000

Attachments

cc: Chair and Members, Senate Rules Committee (w/all Attachments)

Mr. Richard Costigan (w/Enforcement Letter Attachment only)
Legislative Secretary Governor's Office

Alan C. Lloyd, Ph.D. (w/Enforcement Letter Attachment only)
Cal/EPA Secretary

[Return to County Agricultural Commissioner Resources](#) > [2004 Enforcement Branch Letters](#)

October 12,
2004

ENF 2004-023

TO: County Agricultural Commissioners

SUBJECT: PESTICIDE USE ENFORCEMENT PROGRAM PLANNING AND EVALUATION GUIDANCE -
OCTOBER 2004 THROUGH 2006

I'm pleased to provide the Pesticide Use Enforcement Program Planning and Evaluation Guidance. The enclosed guidance represents a simplified approach in targeting core program priorities and evaluating the effectiveness of county pesticide use enforcement programs. This guidance is the culmination of a broad review of the Department of Pesticide Regulation's (DPR's) core programs and enforcement oversight function. Our legislative mission to protect people and the environment guided this review and shaped the final document.

Integral to this review was a discussion about improving coordination between the planning, implementation, and performance evaluation components; and leveraging our related but distinct authorities and responsibilities to yield the greatest program effectiveness. DPR's oversight and evaluation functions, instead of remaining static, will now track the implementation of core program priorities at the local level. This new approach to program planning and evaluation will focus on the cumulative effect of county agricultural commissioner's (CAC's) decisions on local and statewide programs and whether the guidance provided by DPR supports both the CACs' right to act independently and their responsibility to act fairly.

DPR must assure an effective statewide Pesticide Use Enforcement program. Failure to do so will harm individuals and their communities, sensitive ecosystems and the wildlife they support, and ultimately, the various industries whose economic health depends on pest control products and activities. The only route to an effective statewide program is through successful local programs. Our role is to identify real and potential problems and create an environment where program improvement is integral to our daily activities.

In the enclosed document we ask that you evaluate core areas of your program during fiscal year 2004/05. In addition, we encourage you to adopt the Pesticide Use Enforcement Program Planning and Evaluation Guidance as your 2004/05 work plan. The findings of your evaluation should be the basis for a comprehensive, baseline, work plan for future program implementation. Thereafter, amendment of your enforcement work plans would occur as program priorities dictate or specific actions for program improvement are identified.

Feel free to discuss any questions you may have with your Enforcement Branch Liaison and Regional Office Supervisor. We are confident that the resulting guidance will assure our collective actions are directed toward the goal of greatest protection and our implementation is fair, equitable, and effective.

original signed by

Scott T. Paulsen, Chief
Enforcement Branch
(916) 324-4100

Enclosure, (PDF, 66kb)

cc: Mr. Paul H. Gosselin, DPR Chief Deputy Director
Mr. Daniel J. Merkley, DPR Agricultural Commissioner Liaison

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Pesticide Use Enforcement Program Planning Guidance and Evaluation – October 2004 through June 2006

Purpose This document supercedes the instructions outlined in Executive Office letter 02-03 and Enforcement letter ENF 03-23.

This document provides guidance concerning all of the following:

- Statewide pesticide use enforcement program priority goals.
 - County enforcement work plan and focused activity requirements.
 - Performance standards applicable to statewide priority goals.
-

Topics This document contains the following topics:

Topic	See Page
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Changes for 2004-2006

The Department of Pesticide Regulation (DPR) made the following changes to the planning and evaluation programs:

- Extended the planning and implementation cycle to two years.
 - Defined “core program” concept to focus state and local resources on important program activities.
 - Linked core program priorities to legislative mandates and DPR’s strategic goals.
 - Identified required county agricultural commissioners (CAC) enforcement work plan elements.
 - Limited focused activities to core program elements.
 - Linked future effectiveness evaluations to priority activities.
-

Two-year planning cycle

Beginning in Fiscal Year (FY) 2004/05, state and local priority planning will be conducted on a two-year cycle. Extending the planning and implementation cycle will allow for better plan development and should reduce staff resource inputs. The extended cycle will also allow CACs to evaluate the effectiveness of their efforts and to make adjustments prior to the next planning cycle.

Strategic Goals and Core Program

Strategic goals guide program planning	<p>DPR's 2001 Strategic Plan was designed to help us meet our regulatory obligations as described by the Legislature. The enforcement program priorities outlined in this document were chosen as those best suited to achieving statewide strategic goals through local enforcement activities. The CACs' pesticide use enforcement programs are instrumental to meeting the vision and mission articulated in the Strategic Plan.</p>
Strategic vision and mission	<ul style="list-style-type: none"> • Vision: A California where pest management is safe and effective, and contributes to a clean, healthy, sustainable environment. • Mission: To protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.
Strategic goal: strong enforcement reduces risk	<p>DPR will assure that no socioeconomic group of Californians is disproportionately impacted by the use of pesticides¹ by:</p> <ul style="list-style-type: none"> • Identifying and improving areas of greatest noncompliance. • Ensuring that regulatory requirements are practical and enforceable. • Ensuring appropriate enforcement actions are taken. • Enhancing the effectiveness of inspections and investigations. • Enhancing efforts to improve compliance.
Core enforcement program	<p>The "core enforcement program" encompasses related program areas critical to meeting pesticide regulatory program mandates and strategic goals. The core enforcement program covers:</p> <ul style="list-style-type: none"> • Restricted materials permitting. • Compliance monitoring. • Enforcement response. <p>DPR and the CACs face serious budgetary constraints while our pesticide regulatory program mandates remain the same. This situation challenges us to continue to provide an effective statewide pesticide use enforcement program with increasingly limited resources. To balance regulatory program responsibilities and goals with our current resources, DPR focused the FY 2004 to 2006 program priorities on the core enforcement program areas exclusively.</p>

¹ DPR Strategic Plan 2001 <http://www.cdpr.ca.gov/docs/planning/strg_pln/2001plan/strtplan1.pdf>.

Roles and Responsibilities

Purpose of the pesticide use enforcement program

The primary purpose of California's pesticide regulatory program² is to regulate, prohibit or ensure proper stewardship of pesticides registered for use to assure:

- Environmental protection.
 - A safe workplace for all pesticide handlers and agricultural workers.
 - Pest control licensee competency and responsibility.
 - The ongoing availability of pesticides essential to the production of food and fiber and the protection of public health.
-

DPR responsible for statewide program

California law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program. DPR directly regulates most aspects of this program, however, the Legislature delegated local administration of the pesticide *use* enforcement program to the CACs. The success of the *statewide* use enforcement program therefore depends on the collective enforcement achievements at the local level. To assure successful local programs, DPR uses its statewide regulatory authority to oversee, evaluate, and improve the CACs' use enforcement programs (Food and Agricultural Code [FAC] section 2281). State law also requires DPR to provide CACs with guidance, in the form of instructions and recommendations; assist CACs in the planning and development of adequate county programs; evaluate effectiveness of the local programs; and assure that CACs take corrective actions in areas needing improvement.

CACs responsible for local use enforcement

Whenever California law places joint enforcement responsibilities on the Director and the CACs, CACs are responsible for the administration of the local program with few exceptions. The FAC and Title 3, California Code of Regulations (3CCR) describe the CAC's enforcement authority, activities they must, or may, conduct to properly administer this program, the requirement to implement the local programs according to state-issued guidance, and their obligation to work cooperatively with DPR in the improvement of their programs.

Continued on next page

² Excerpted from Food and Agricultural Code section 11501.

Roles and Responsibilities, Continued

CAC discretion While the FAC and 3CCR clearly establish DPR's oversight role, they also grant broad discretion to the CACs in the daily administration of their local pesticide use enforcement programs. The variety of pesticide use in California precludes an effective "one size, fits most" enforcement program. DPR will never be able to provide guidance for every potential contingency. Therefore, the success of our collective program depends on CACs to make sound decisions and take independent, appropriate, and consistent actions whenever necessary. DPR will support the decisions made and actions taken by CACs provided they result in fair and effective local pesticide use enforcement programs.

**Role of DPR
written
guidance**

DPR provides written guidance to assist CACs and their licensed staff in making sound decisions and taking appropriate actions. This guidance also serves to promote statewide uniformity and fairness to the extent possible.

Our evaluation of DPR's current guidance documents indicates a critical need to rescind outdated material, improve the quality of the remaining guidance, and move away from the current "prescriptive" approach.

Our written guidance does not have the force of law. It may also be inappropriate for a given situation, regardless of the age of the document. DPR expects CACs and their staff, as persons licensed to conduct pesticide use enforcement activities, to be able to obtain, analyze, and apply all relevant information in the course of responding to any given situation. This expectation is at the core of DPR and the Legislature's willingness to grant local authority and discretion to the CACs.

**Role of
Enforcement
Branch
Liaisons**

DPR's Enforcement Branch Liaisons and supervisors are the Director's designated representatives in the field. As such, they are the CACs' primary points of contact concerning the implementation and evaluation of the local pesticide use enforcement program. Enforcement Branch Liaisons are subject matter experts in the areas of pesticide use enforcement and response, episode investigation, and local program evaluation. Their knowledge of local issues and their authority to guide local program improvement fosters the consistent and fair implementation of regulatory requirements among independent local programs. Their actions and interventions, on behalf of the Director, promote an effective statewide use enforcement program.

Statewide Enforcement Program Priorities

Restricted materials permitting

DPR and the CACs must assure that our restricted materials permit system protects people and the environment while allowing for effective pest control. To assure effective implementation of the permit system, DPR plans to:

- Implement a site-monitoring program to focus on areas of reoccurring noncompliances.
- Assure thorough evaluation of hazards posed by proposed applications.
- Improve current restricted materials permit guidance.

Compliance monitoring

DPR's strategic goal to reduce risks to people and the environment depends on an effective and comprehensive compliance-monitoring program. Inspections and investigations allow CACs to identify and respond to potential hazards to workers, the public, and the environment.

Preliminary inspection data shows high compliance rates³. However, CACs also investigate about 1,800 pesticide episodes, issue about 7,700 compliance, and enforcement actions annually. This suggests an opportunity to improve our compliance-monitoring program to assure that violations are detected before causing adverse effects. To meet this strategic goal, DPR plans to:

- Improve Priority Episode Investigation procedures, implementation, and reporting to ensure a timely response to the U.S. Environmental Protection Agency pursuant to Cooperative Agreement between DPR, County Agricultural Commissioners and Sealers Association, and U.S. Environmental Protection Agency, Region 9.
- Assure that our compliance monitoring program is comprehensive and effective at detecting violations.
- Assure thorough and timely investigations.
- Improve current inspection⁴ and investigation guidance.

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³ Inspection tracking database, 05/01/04: 8288 inspections entered that were conducted between July and November 2003 with 97.8 percent compliance with applicable regulations. The data is very incomplete at this point, however, the database includes all inspection types and most counties.

⁴ FAC section 12844(b) requires DPR to consider the comprehensiveness and effectiveness of inspections conducted in each county when assessing mill funds. DPR's current Inspection Procedures Manual discusses effective and ineffective inspection strategies but does not define comprehensive in the context of compliance monitoring. DPR intends to amend this guidance to better address comprehensiveness and effectiveness. This effort will not be completed before the beginning of the FY 04/05, however, Enforcement Branch Liaisons will work with each CAC during FY 04/05 work plan negotiations to develop and implement a local compliance-monitoring plan that addresses DPR's strategic goals within the CACs resources

Statewide Enforcement Program Priorities, Continued

**Enforcement
response**

To realize the full benefit of a statewide pesticide regulatory program, DPR and the CACs must apply our enforcement authority fairly, consistently, and swiftly. Our joint enforcement response will emphasize worker and environmental safety and enhance deterrence by:

- Creating a climate that compels all pesticide users to comply with state laws and regulations through a program of progressive discipline,
 - Ensuring that compliance, once achieved, is sustainable,
 - Helping CACs balance the level of enforcement response with their staffing resources.
 - Improving enforcement response guidance.
-

Enforcement Work Plans – General Guidance

Option for FY 04/05

CACs may adopt the "Enforcement Work Plan Guidance" section of this document as the FY 04/05 portion of their two-year work plan and their FY 04/05 focused activity proposals. By adopting DPR's work plan and focused activity guidance, CACs are exempted from the requirement to prepare a work plan and focused activity project proposal(s) for one year. During this time, CACs must use this opportunity to conduct program reviews, develop program improvements, and prepare baseline work plans that are meaningful, effective, and practical. DPR expects CACs to initiate work plan negotiations in the spring of 2005 to allow adequate time for review, approval, and implementation no later than July 1, 2005.

CACs who intend to adopt this guidance as their work plan and focused activities must notify their Enforcement Branch Liaison in writing as soon as possible.

Evaluate resources needed for core program

CACs should evaluate the resources they need to accomplish their core enforcement program workload before negotiating their next enforcement work plan. Desirable program elements (i.e., outreach, training, focused activities) may be conducted when there are adequate resources to implement the expected core program workload.

Work plan approval

DPR will approve enforcement work plans that have clear goals and deliverables and are focused on core program implementation⁵. DPR will not approve work plans where desirable activities detract from the CACs ability to implement their core program responsibilities. Enforcement Branch Liaisons will assist the CAC in identifying innovative ways to combine desirable activities with their core program responsibilities.

July 1 implementation

Prior to the end of the work plan cycle, CACs will allow enough time to review and amend their baseline work plans and complete negotiations with the Enforcement Branch Liaisons to assure that implementation can begin on the first day (July 1) of the next work plan cycle.

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⁵ This general requirement applies to any CAC who does not adopt this guidance as the FY 04/05 portion of their extended work plan. To encourage regional consistency, the Enforcement Branch Regional Office supervisor will approve work plans. This approval cannot be delegated to non-supervisory staff, except for minor changes to the approved document.

Enforcement Work Plans – General Guidance, Continued

Required work plan components

DPR wants enforcement work plans to be simple to prepare, negotiate, understand, implement, and evaluate.

To facilitate upcoming negotiations, CACs should prepare a draft plan before meeting with their Enforcement Branch Liaisons. These plans should contain the following components:

Component	Function
County resources	<ul style="list-style-type: none"> • A description of resources is strongly suggested, especially if the CAC expects resource reductions that may impact pesticide use enforcement or core program implementation. • Describe normal or expected workload for each priority area (i.e., total permits issued and Notices of Intent (NOI) approved), local program issues, and level-of-effort required for implementation (i.e., number of full-time staff needed for normal or expected workload). • Describe expected program changes in general terms (i.e., 25 percent reduction in structural pest control inspections, no annual training or outreach).
Corrective actions	<ul style="list-style-type: none"> • Required if prior evaluation(s) contained agreed-upon corrective actions. • Discuss current corrective actions and the measures that will be taken to address pertinent issues.
Core program priorities	<ul style="list-style-type: none"> • A listing of core program priorities is required. Address each DPR core program priority listed on page 2 or explain why the specific priority does not apply to the county program. See specific core program work plan guidance on the following pages. Make sure work plan commitments are commensurate with expected workload. • Local core program priority activities are optional and in addition to core program priorities.
Desirable activities	<ul style="list-style-type: none"> • Other desirable activities are optional. Workload for desirable activities depends on CAC resource availability. If the CAC elects to conduct desirable activities, the work plan must describe the planned activities, estimated resources, and expected program benefits.

Enforcement Work Plans – Core Program Element Guidance

Restricted materials permitting

Generally, applications of California restricted materials may occur only under a permit issued by the CAC. Despite declining resources, CACs must evaluate each proposed application before it occurs and document their determination that the application posed no unacceptable risks or that the permit was conditioned to mitigate identified hazards. Per 3CCR section 6436, CACs also conduct pre-application site monitoring when they determine that only on-site evaluation will allow an appropriate assessment of risk. Annually, CACs issue around 45,000 permits, approve 178,000 NOIs, and conduct 11,000 pre-application site-monitoring inspections. Statewide, CACs expend about 90 out of about 302 personnel years reported to implement the permit system⁶.

Permit system workload cannot be controlled by the CACs or by DPR and technological solutions are years away. We are required to provide an effective program regardless of current budget constraints. DPR's permit system priorities focus on business process evaluation and improvement to assure the most efficient use of available resources. The following table provides guidance for incorporating permit program priorities into CAC work plans.

Priority	Work plan guidance
Permit evaluation – process evaluation and improvement planning	<p>For FY 04/05, CAC will evaluate their permit evaluation process for strengths, weaknesses and areas needing improvement, document their results, and develop a plan for program improvement⁷. The document should describe the current business process and their findings. This effort will allow DPR and the CACs to assess permit system resource needs and to adjust or redirect workload to match resource availability.</p> <p>CACs may conduct this evaluation as a FY 04/05 Focused Activity.</p>

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⁶ CACs reported expending 148,261 hours implementing the restricted materials permit system out of a total of 544,052 hours reported for all licensed activities. The actual hours expended on the permit system is higher than reported because many permit system-related activities can only be captured under "Other Licensed Hours". The hours associated with pre-application site inspections were extrapolated using current 03/04 PRAMR data. "Person Year" is based on 1800 hours per year for a full-time staff.

⁷ References: 3CCR sections 6432, 6428, 6430, and 6434; FAC sections 14006.5 and 12825

Enforcement Work Plans – Core Program Element Guidance, Continued

Restricted materials permitting (continued)

Priority	Work plan guidance
Permit evaluation – implementation	<p>During FY 05/06, CAC work plans will include a commitment to implement planned improvements (where needed) and to assess value/success of changes.</p> <p><i>Note:</i> If the FY 04/05 evaluation indicates significant threats to program effectiveness, CACs are urged to take corrective action immediately. If this requires resource redirection, CACs should contact their Enforcement Branch Liaisons as soon as possible.</p>
Site monitoring plan development	<p>CACs will develop local, multi-county or regional site-monitoring plans that utilize CACs' knowledge of pesticide hazards, local conditions, cropping and fieldwork patterns and handler, permittee, and advisor compliance histories.</p> <p>During FY 04/05, CAC work plans will include a commitment to evaluate their current site monitoring activities for strengths, weaknesses, and areas for improvement and develop a site-monitoring plan that addresses:</p> <ul style="list-style-type: none"> • High priority situations (pesticide by crop, by environmental condition, by location, etc.) and the proposed level of response (i.e., "staff-on-site," "100 percent monitoring," "as resources allow," etc.). • Assessment schedule and success criteria to help determine plan adjustments. • The percent of total NOIs approved to be monitored. CACs should not limit themselves to monitoring five percent of approved NOIs if resources allow and the local situation requires. Pre-application site monitoring can prevent adverse episodes from occurring and, as such, is critical to permit program effectiveness. <p>CACs may conduct this evaluation and plan development as a FY 04/05 Focused Activity.</p>
Site monitoring plan implementation	<p>During FY 05/06, CAC work plans will include a commitment to implement, assess, and amend this plan as needed. CACs will document their assessment findings and program changes implemented. The Enforcement Branch Liaisons as part of their annual program evaluation will review this information.</p>

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Enforcement Work Plans – Core Program Element Guidance, Continued

Compliance monitoring priorities

Effective and comprehensive compliance monitoring is essential to assuring the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance.

Effective compliance monitoring can result in significant regulatory program improvements. Changes in our private applicator certification program stemmed from the fact that compliance assessment showed high noncompliance rate among growers (Statutes of 1995, Chapter 705, Senate Bill 800). More recently, Los Angeles CAC conducted a successful undercover surveillance program that documented significant compliance problems among residential fumigation companies. The nature and pervasiveness of the violations in combination with Los Angeles' documentation compelled the Pest Control Operators of California to publicly commit to improving compliance throughout their industry. An effective inspection strategy encompasses a broad spectrum of handling situations within the county and responds quickly to local issues.

DPR's Data Evaluation/Inspection Tracking Project currently contains compliance information from over 8,000 inspections conducted statewide between July and November 2003. Overall, compliance with all applicable requirements is over 97 percent. In contrast, many pesticide episodes investigated by CACs stem from violations and CACs issue about 7,700 compliance and enforcement actions annually. The data suggests an opportunity to improve our compliance-monitoring program such that violations are detected before they cause pesticide episodes.

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Enforcement Work Plans – Core Program Element Guidance, Continued

Compliance monitoring priorities (continued)

The following table provides guidance for incorporating compliance monitoring priorities into CAC work plans.

Priority	Work plan guidance
Comprehensive inspection plan development	<p>FAC section 12844(b) requires mill assessment fund allocation be based on the number, comprehensiveness, and effectiveness of the CACs' inspections. Tracking quantity is simpler than evaluating comprehensiveness and effectiveness. DPR's Inspection Procedures Manual briefly discusses inspection priorities⁸ and ineffective strategies. Developing a comprehensive inspection plan will allow us to adequately measure the effectiveness or comprehensiveness of the statewide inspection program.</p> <p>During FY 04/05, CAC work plans will include a commitment to evaluate their current inspection program for strengths, weaknesses, areas for improvement, and to develop a comprehensive inspection plan based on their findings. As with permit site monitoring plans, we believe that inspection strategies developed by CACs, either individually or regionally, can be more effective and comprehensive than a plan developed by DPR. The CACs' evaluations should determine the following:</p> <ul style="list-style-type: none"> • How much of the inspection program is planned? Spontaneous? Does it appropriately balance targeted with random inspections? • Does the program cover handling situations commensurate with risk, violation history, pesticide episode occurrence, local and/or state priorities, pesticide use activities, etc? • Can the program respond to changes quickly? • Is management involved in staff inspection activities? • Does the inspection program have a measurable effect on compliance? <p>CACs may conduct this evaluation and plan development as a FY 04/05 Focused Activity.</p>

Continued on next page

⁸ Inspection Procedures Manual, June 4, 2003, pages 8-9.

Enforcement Work Plans – Core Program Element Guidance, Continued

Compliance monitoring priorities (continued)

Priority	Work plan guidance
Comprehensive inspection plan implementation	During FY 05/06 (or sooner if practical), CACs commit to implement, assess and amend the plan as needed. CACs will document their assessment findings and program changes implemented. Enforcement Branch Liaisons as part of the effectiveness evaluation will review this information.
Investigation response and reporting improvement	<p>CACs will commit to evaluate their investigation response and reports, document their findings, and implement program improvements as soon as possible. This effort should focus on:</p> <ul style="list-style-type: none"> • <u>Timely initiation and completion of all non-priority investigations.</u> According to illness investigation tracking, over half of the human illness investigations take longer than 120 days to complete⁹. Reducing initiation and completion times will result in improved evidence gathering. • <u>Timely priority episode initiation and reporting.</u> Following initial notification from DPR, CACs must initiate priority episode investigations within two working days and submit a preliminary update to DPR within 15 days. • <u>Development and use of investigation plans</u>¹⁰. As suggested in DPR's investigation guidance, CACs should develop investigation plans and use the "elements of the violation analysis" techniques to reduce the time needed to obtain key evidence and complete the investigation report. Counties that follow DPR's guidance have shown tremendous improvement in the quality and timeliness of their investigations. • <u>Thorough report preparation.</u> Complete inspection reports include a discussion of all suspected and causal violations discovered during the investigation. DPR staff found that investigative reports often made no mention of the enforcement findings even though the 2002 Pesticide Illness Surveillance Program report indicated a high noncompliance rate. Incomplete reports are sent back to the CAC for additional information -- a resource drain for both CACs and DPR.

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⁹ As of March 2004, 88 investigative reports from 2003 are not complete and 59 percent of those are over 120 days old.

¹⁰ Investigations should have a brief investigation plans that, at a minimum, list each of the elements of each of the suspected violations; list persons who need to be interviewed; list type of samples and/or other evidence necessary to prove particular elements of violations; list probable follow-up inspection activities (e.g., headquarters); provide a brief summary which consists of a few paragraphs describing violations suspected, findings of fact to-date, and planned activities; and a list of persons who need to be provided with periodic updates. An up-to-date plan usually has all information necessary to provide priority episode investigation preliminary findings to the Regional Offices within 15 days of notification.

Enforcement Work Plans – Core Program Element Guidance, Continued

Enforcement response

Achieving sustainable compliance efficiently is a top priority for both CACs and DPR. DPR recognizes the difficulty in balancing limited staff resources with the need to take visible, effective, and often resource-intensive enforcement actions. The Enforcement Guidelines provide tools to help CACs choose the best enforcement option and, when resource limitations preclude a selected option, a method to document the factors that influenced the CAC's decision.

Priority	Work plan guidance
Enforcement response evaluation	<p>DPR requests that all CACs make a commitment to evaluate their enforcement program to assure that it is fair, consistent, and timely. Special emphasis should be placed on the ability to detect and deter "repeat" violators through both compliance monitoring and enforcement responses. CACs facing budget reductions and CACs with seasonal investigation increases should take the additional step of creating an enforcement response scheme that will help balance competing enforcement response priorities with limited staff resources. At a minimum, CACs must:</p> <ul style="list-style-type: none"> • Consider all appropriate enforcement options¹¹ before taking action. If available options will not result in sustained compliance, refer to the State for enforcement action, when appropriate. • Assure timely responses to ensure against lost or compromised evidence. • Respond to all violations whether by compliance or enforcement action. This will help create a climate that compels compliance. • Choose the response that is most likely to result in sustained compliance with the most efficient use of resources. If resources preclude implementing the first choice, implement the second or third choices, as resources allow, and document the reasons for the alternative action in a Decision Report (Enforcement Guidelines). • In cases of <u>extreme staffing shortages</u> previously identified in the work plan, the greatest effort should be directed at violations that pose the greatest risk to people or the environment. Under these circumstances, DPR expects CACs to direct a majority of their resources to correcting health and safety violations and accepts that there may be no responses to certain "paperwork" violations. At a minimum, DPR expects CACs to document "no action" or "reduced action" decisions.

¹¹ See the "Regulatory Toolbox" for all CAC enforcement and compliance action options. DPR issued the laminated hard copy to CACs in February 2003. A version that does not include the general authority sections is also available at: <<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2003/2003atch/attach6.pdf>>.

Focused Activities Issues

FY 04/05 Focused Activities

DPR will approve focused activity proposals that align with the core program priorities and work plan guidance contained in this document. As discussed previously, CACs may adopt the following focused activities (described in "Enforcement Work Plan Guidance") without creating new project proposals:

- Permit Evaluation – enforcement work plan commitment to evaluate and improve the process used to evaluate permits and NOIs.
- Site Monitoring Plan – enforcement work plan commitment to develop, implement, and assess an effective pre-application site monitoring plan.
- Comprehensive Inspection Plan – enforcement work plan commitment to develop, implement, and assess a comprehensive inspection plan.

To qualify for focused activity mill disbursement, CACs must provide DPR with a final report detailing their activities and findings for each focused activity for which payment is requested.

Administration The table below explains DPR's general administrative requirements for Focused Activities¹².

Element	Description
Advance planning	Work may not start on an activity until it has been documented, negotiated, and approved.
Program benefit	The activity must have demonstrable program benefit. The proposal must discuss the benefits to local or statewide program.
Adequate resources	Must not detract from the CAC's ability to implement core program activities.
Documented	Project proposal(s) must be documented. Final reports must be submitted to DPR upon completion. Funding will not be disbursed in the absence of a final report.
Funding issue	CACs will certify, in their proposals, that the activity is not already funded through other sources.
Timely submission to Regional Office	<ul style="list-style-type: none"> • Original proposals must be submitted; CAC must submit proposal amendments or cancellations to the Regional Office in a timely manner. • Completed project reports must be submitted with the CAC's final Pesticide Regulatory Activities Month Report. Failure to submit this information will affect DPR's ability to disburse funds appropriately.

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¹² CACs who adopt DPR's work plan and focused activity guidance for FY 04/05 will not be required to document focused activity proposals, explain the program benefits, or certify funding issues. To qualify for FY 04/05 Focused Activity funding, CACs must submit a final report for each completed qualified activity.

Focused Activities Issues, Continued

**Focused
Activity
alternatives**

CACs who do not adopt DPR's FY 04/05 work plan and focused activity guidance may propose and implement Focused Activities according to the administrative requirements discussed in the previous block. CACs who choose to develop alternative Focused Activities for FY 04/05 may develop original ideas, adapt other CACs' activities to their local needs or continue implementation of activities suggested in earlier DPR Prioritization Plans (i.e., Enhanced Field Worker Safety and Chemigation Inspections).

The Environmental Monitoring Branch is in the process of evaluating the results of the Chemigation Focused Activity that some counties previously participated in. Since many chemigated pesticides are not restricted materials, the activity focused on identification of sites where chemigation occurs and where backflow prevention devices would be required. CACs interested in conducting the Chemigation Focused Activity please contact Ms. Joy Dias, DPR Environmental Research Scientist, at (916) 324-4183 or <jdias@cdpr.ca.gov>, prior to proposal development or work plan negotiation.

Pesticide Use Enforcement Program Evaluation

Coordinate evaluation with priorities	Starting in FY 04/05, DPR will coordinate pesticide use enforcement program evaluation guidelines with current DPR priorities and CAC work plan commitments.
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Focus on effect not process	For many years, DPR's effectiveness evaluation focused on local program administration and CAC adherence to DPR's written guidance. In general, the evaluations show that CACs administer their programs properly and tend to follow DPR's written guidance.
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Beginning in FY 04/05, DPR will ascertain core enforcement program effectiveness by evaluating the effects of CACs' decisions and actions on workers, the public, and the environment. DPR will use the evaluation results to improve laws, regulations and our written guidance, help CACs make program improvements where needed, and coordinate the sharing of effective local enforcement strategies. In short, DPR wants to shift our program evaluation process toward a cooperative and proactive approach leading to program improvement at both the state and local levels.

Core program performance standards	The statewide pesticide use enforcement program must assure the protection of workers, the public, and the environment and that pesticide risks are not disproportionately borne by any particular group of Californians.
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DPR will assess the effectiveness of the statewide pesticide use enforcement program by evaluating the results of each CAC's core program implementation. This section provides general evaluation guidance for the following core program priorities:

- Implementation of corrective actions identified in prior program evaluation(s).
 - Restricted materials permitting.
 - Compliance monitoring including inspections, investigations, and surveillance.
 - Enforcement actions.
-

Continued on next page

Pesticide Use Enforcement Program Evaluation, Continued

Implementation of corrective actions The table below shows the criteria DPR will consider when evaluating pesticide use enforcement program effectiveness.

Effectiveness based on:	Suggested questions to ask...
CAC's effort to implement agreed upon action, not the actual results.	<ol style="list-style-type: none"> 1) Did the CAC implement the agreed-upon corrective actions shown in prior program evaluation(s)?¹³ 2) If not, why? What was the effect of the CAC's inaction on the program? 3) If so, did implementation correct the problem? Is it sustainable? <ol style="list-style-type: none"> a) If not: <ul style="list-style-type: none"> • Is it still a problem? • What other approaches might work within the CAC's resources? b) If so, can the solution help other CACs? Can DPR use it in regulatory or policy decisions?

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¹³ DPR understands that some changes or improvements may be beyond the direct control of the CAC and require external support from DPR or other sources.

Pesticide Use Enforcement Program Evaluation, Continued

Restricted
materials
permitting

The table below shows the criteria DPR will consider when evaluating pesticide use enforcement program effectiveness.

Effectiveness based on:	Suggested questions to ask...
<ul style="list-style-type: none"> • Occurrence of adverse incidents where CAC had a high degree of control (actual risk). • Program administration (potential risks). 	<ol style="list-style-type: none"> 1) Does the CAC evaluate all required permit information before the application takes place? <ol style="list-style-type: none"> a) If not: <ul style="list-style-type: none"> • Why? Resource limitations? Poor business process? • What are the potential risks to the effectiveness of the program? • What can be done to reduce risks and improve business process? b) If so: <ul style="list-style-type: none"> • Was it effective? Did any adverse effects still occur? • What were the costs of a full evaluation to the CACs' program? Did they give up other activities? 2) Did the CAC implement a site-monitoring program? <ol style="list-style-type: none"> a) If so: <ul style="list-style-type: none"> • Was it responsive to program needs/changes? • Was it effective? Was it preventative? • Was it comprehensive? Were all sectors or risk factors covered? • Did the CAC develop effective approaches that could be shared with other CACs? b) If not: <ul style="list-style-type: none"> • Why? • What are the potential or actual risks to the effectiveness of the permit program? • What improvements can be made? 3) Are there risks that DPR needs to address to better support the CAC's permit program?

Continued on next page

Pesticide Use Enforcement Program Evaluation, Continued

Compliance monitoring

The table below shows the criteria DPR will consider when evaluating pesticide use enforcement program effectiveness.

Effectiveness based on:	Suggested questions to ask...
<ul style="list-style-type: none"> • Comprehensiveness of inspection program. • Completeness, accuracy and timeliness of investigations. 	<ol style="list-style-type: none"> 1) Did the CAC implement a comprehensive compliance-monitoring program? (See second item under the restricted materials permit program area for similar questions). 2) Does the CAC conduct surveillance? <ol style="list-style-type: none"> a) What percent is planned? What percent is random? b) Is it effective? <ul style="list-style-type: none"> • Did they find new violators or repeat violators? • Did it help the CAC improve the compliance-monitoring program? c) Is it an appropriate resource use? d) Can improvements be made? 3) Are the CACs investigations complete and timely: <ol style="list-style-type: none"> a) If not, why? What caused these problems? <ul style="list-style-type: none"> • How many were sent back for additional information? What was the nature of the information needed? • How many were not completed in a timely manner? b) What risks do these problems present to the program? c) What improvements can be made? 4) Are the CAC's investigations effective? <ol style="list-style-type: none"> a) Do they clearly explain how or why the event occurred? b) Did their investigation allow them to take appropriate enforcement action when causal violations were discovered? c) Did the investigation and follow up activities allow CAC to implement preventative measures? At the applicator or business level? Within the local program?

Continued on next page

Pesticide Use Enforcement Program Evaluation, Continued

Enforcement response The table below shows the criteria DPR will consider when evaluating pesticide use enforcement program effectiveness.

Effectiveness based on:	Suggested questions to ask...
<ul style="list-style-type: none"> • Appropriateness and timeliness of enforcement actions. • Progressiveness of response for repeat violators. 	<ol style="list-style-type: none"> 1) Are enforcement actions appropriate? <ol style="list-style-type: none"> a) Do compliance and enforcement actions fit the situations to which they are applied? Are the choices effective? Are there enforcement options that are not routinely considered but should be? b) Does it seem that the similar types of compliance or enforcement actions are applied in a routine manner? c) If there are a seemingly low number of enforcement actions <u>requiring due process</u>, is the quantity related to the staffing resources? d) Do certain industry segments receive treatment that is out-of-balance with the gravity of their violations? 2) Are enforcement actions timely? <ol style="list-style-type: none"> a) Are enforcement actions done close enough to the time of the incident to provide an effective and relevant reminder of the consequences of the violation? b) Are enforcement actions done close enough to the time of the incident to provide credible and reliable evidence? c) Are enforcement actions done in a manner so that case file preparation is not being driven solely by an impending statute of limitations? 3) Are enforcement actions for "repeat" violators progressive? <ol style="list-style-type: none"> a) Are "repeat" actions and penalties (if levied) more severe? b) Is there any timely follow-up inspection activity for persons or businesses with previous noncompliances or violations? c) If not, why not?

CALIFORNIA CONSERVATION CORPS

HEADQUARTERS

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The Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

Thank you very much for the opportunity to address the Senate Rules Committee and answer the questions you have asked. I often tell people that I have the best job in state service because the CCC enables me to respond to former director BT Collins' question, "What are you doing to make a difference in the world?" I am eager to seek your consideration of my confirmation and trust that the answers provided below will inform the Committee concerning my qualifications.

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Director of the California Conservation Corps (CCC)?

My primary goal as the Director of the CCC is to re-energize this venerable organization and revive its original mission to provide meaningful work skill training and life skills development for corpsmembers while undertaking public benefit resource protection projects. In order to accomplish this revitalization of the CCC, I have focused on strengthening the organization to ensure that it has the depth of leadership, endurance, and commitment to its mission that will be necessary to make the organization successful for the decades to come.

I believe this organization has come to a crossroad in its existence, and I therefore consider this goal to be of the utmost importance and its successful realization absolutely critical to the continued viability of the organization.

There are numerous natural resources, environmental, agricultural, and transportation projects throughout California that require coordination and hard work to complete. These include the Coastal Trail, the Pacific Crest Trail, watershed restoration, and the management of millions of acres of parks and other public lands that the state has purchased. I intend to make the CCC a catalyst and rallying point around which completion and maintenance of these significant projects can be guaranteed.

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2. What is the makeup of your workforce? Will the CCC need to address the issue of replacing middle and upper management as a result of retirements in the next several years?

As of Tuesday, May 31st, 2005, the CCC has 325 civil servants currently employed. This includes 89 headquarters employees (including 21 state-wide recruiters) and 236 field employees. Thirty-five percent, or 113 employees are classified as Conservationist I. These individuals have primary interaction with corpsmembers. The Conservationist II, Conservation Supervisor, and Center Director classifications complete what is the backbone of the CCC. Forty-four percent of CCC employees are female and 56% are male.

The CCC's workforce faces rates of retirement and management replacement issues similar to many other state departments. At the CCC, 28% of upper management is currently within age of retirement and, in less than 5 years, 50% of upper management will be within retirement age. In fact, 52% of all management positions in the CCC will be at retirement age by 2010. Therefore, the CCC needs to address the upcoming retirement of potentially over 50% of the management structure within 5 years.

Many persons identified as those who would occupy management positions within the CCC unfortunately transferred to other state departments in the wake of consecutive budget cuts to the CCC that occurred during the last 4 years, but some have returned within the last several months. We have been able to enlist the services of some of the CCC's retired annuitants to assist at headquarters, and we expect that some of these retired annuitants will continue to play a role within the department's management structure for the next several months.

3. What type of succession planning is in place to deal with this issue? Do you have staff training or development programs to train the next generation of managers?

As is the case in many state departments, there is very little formal succession planning at the CCC, and there is a lack of meaningful training and development programs for future managers. Over the last few years the department was in essence planning for its future deterioration due to successive General Fund cuts that began in earnest in 2002. Nowadays, the department is been focusing on providing training that is either statutorily or contractually required. Informal mentoring and project management/supervisory training is on-going within the department but is not supported by any dedicated staff as they were all laid off during the cuts.

Changes in the enabling statutes of the CCC have forced it to increasingly rely on contractual agreements that reimburse the CCC for services provided by corpsmembers, and have also required the majority of staff time to be spent managing labor crews "on the grade" rather than training corpsmembers and providing meaningful experiences. Furthermore, there is almost no budget for non-mandatory training. The down-sizing of the CCC in recent years has resulted in few opportunities for upward mobility and a lack of promotional incentives for staff to develop their skills or work with their peers and supervisors to find opportunities for training.

4. What training to field staff receive or are they required to possess in counseling skills?

Conservationists are trained in Active Listening & Counseling Skills within their Initial Entry Training. Within two years of their hiring, the Conservationists attend the Certified Leadership Academy and received training in Coaching: Bringing out the Best in Others, Proactive Listening Skills, Moving from Conflict to Collaboration, and Giving and Receiving Constructive Feedback.

5. Is the corps experiencing any salary compaction and has it had any impact on the ability to recruit and retain middle and upper managers?

The CCC is experiencing salary compaction particularly in the Conservation Supervisor classification. The Conservation Supervisor is the sales manager of each center and is responsible for securing reimbursement contracts with other agencies or private entities, and then acting as project managers to make sure work is done well, on time and within budget. Recently, the Conservationist I and II classifications received public safety retirement benefits. As a result, few Conservationists eligible to apply for open positions as Conservation Supervisors, which is not a public safety classification. Recently the application rate has been less than 10% of those eligible. A related factor is that Conservation Supervisors do not receive overtime. A subordinate Conservationist II must only work 14 hours of overtime per month to earn pay equal to that earned by a Conservation Supervisor.

The lack of interested candidates who respond to openings for Conservation Supervisor has adversely affected the department's ability to groom future center directors and staff.

6. What effect has the reliance on reimbursements had on the type and location of projects the corps is undertaking? Specifically, has the corps shifted projects to urban areas?

The CCC is now required to earn the majority of its funding through reimbursements, whereby we charge other organizations for our services, which include everything from roadside brush clearance to fisheries restoration. Also, as the CCC's General Fund budget shrank, a number of CCC centers were forced to close or turn into non-residential operations, which are cheaper to operate than residential centers. But it does not appear that the CCC has shifted projects to urban centers.

At non-residential centers, corpsmembers merely report to the center in the morning, work, and go back to their homes at night. This is, unfortunately, a marked departure from and is inconsistent with the original goals and mission of the department. It frankly does not offer a meaningful experience to corpsmembers.

There are times in which the CCC wins small but useful contracts in remote areas where the establishment of a residential center would not be a good business decision unless more long term contracts could be established. While a residential center in an urban area has different security requirements than a center in a rural area, both serve equally important populations and projects.

It is my primary goal to reverse the recent trend of closing residential centers and work hard to revive them. In fact, with the help of Senator Chesbro and Assemblymember Berg, the CCC re-opened our Ukiah residential center just last month.

7. In the past the corps has engaged in environmental restoration efforts in rural and wilderness areas. These projects have included restoration of streams and riparian habitat for salmon and steelhead. What level of environmental restoration work is the corps now engaged in? Do you believe that such projects should be increased? If so, how?

The CCC remains engaged in environmental restoration projects yet does not complete as many due to the smaller number of corpsmembers and staff. We are the California Conservation Corps, after all, and it is frustrating that we do not spend all of our time restoring wildlife habitats, teaching Californians how to use energy more efficiently, maintaining park lands, and training to respond to emergencies such as forest fires, oil spills, floods and mudslides. I believe that such environmental projects should be increased, yet the CCC's reimbursement model does not allow for much flexibility in its choice of work.

With its trained workforce, the CCC offers non-regulatory approaches to conservation and restoration by working with private landowners, federal, state and local agencies, and not-for-profit organizations to fix environmental problems before they become regulatory burdens. This is an area that could provide significant opportunities for the CCC to work on conservation projects and has the potential to be supported by a diverse set of funders.

8. What types of other environmental projects would you like to see the corps undertake?

I would like to see workforce development partnerships with industry and labor unions to perform a wide range of environmental projects. For example, on the energy side, the CCC could partner with manufacturers, installers, and electricity and plumbing trades to provide training and projects to install solar panels and solar water heaters throughout the state. Corpsmembers trained through these projects would have better chances of being hired into those industries, and the CCC would accomplish an important environmental mission in the process. On habitat restoration, the CCC has nearly countless opportunities to partner with local communities, particularly if the department can use park bond funds to match local investment or secure a larger portion of its funding from other than reimbursement contracts.

9. Which length of boot camp provides the appropriate level of training? What are the differences that each boot camp provides to the new recruits? Is there any difference in the retention rate or length of stay for new recruits as a result of the two types of boot camps?

As a former Marine officer, I strongly believe that there should be one type of boot camp, and the one week training that the CCC currently provides at each center is woefully inadequate. Boot camp should be a minimum of two weeks, and run in a

single location in order to provide a common, high quality experience for incoming corpsmembers. The boot camp curriculum should be standardized, and teach corpsmembers the fundamentals of self-discipline, safety, and teamwork, all of which result in increased confidence and a more productive corpsmember.

To prove this, we recently conducted a two-week boot camp pilot program at the CCC's BT Collins center at Greenwood, near Auburn. Despite training that was twice as long, far from home for most participants, and three times harder than the current one-week program, there were far fewer dropouts, corpsmembers shared a vastly increased sense of camaraderie and accomplishment, and they were clearly better trained and more motivated to succeed than usual.

Boot camp for the CCC should be a requirement – In my opinion, there really isn't a CCC unless there is a boot camp. An analogy to the current one-week program, which is not intensive by any stretch of the imagination, would be a military that did not train its soldiers before sending them into battle. Because CCC now exists as a reimbursement model, the CCC does not have the budget to operate a centralized boot camp.

On the issue of retention, while the goal is to stay in the CCC one full year, the average stay of a corpsmember is closer to 7.5 months. A corpsmember can stay for up to three years as long as he or she advances in rank and skills. Generally, if they leave before 6 months it is because they are not willing to work hard or they get fired for poor performance or disciplinary problems. If they leave after 6 months, it is usually because they get another job that pays more or is in line with their career goals. If a corpsmember leaves for a good-paying job, then part of the CCC's mission has been accomplished.

A proper boot camp would increase retention rates by better preparing Corpsmembers for the hard work that is required of them and providing a sense of membership to a team.

10. What educational services do corpsmembers receive? Do you have a charter school? Is it accredited?

Traditional education services are important to the CCC, as about 45% of corpsmembers arrive without high school diplomas, although many of those corpsmembers have GED's.

There are high school teachers at most of the 24 CCC training centers, and corpsmembers are strongly encouraged to earn their diplomas or GED's while they are in the program. Ten centers partner with local adult education and community college systems to provide GED, high school and other education opportunities. For example, the Vernon & Main center in Los Angeles and the Norwalk center are served by teachers from the LA Unified School District's Central High School. Fourteen centers use the John Muir Charter School, which is chartered by the Nevada County School District. The John Muir Charter School is not yet accredited.

It should be noted that the CCC is not a high school, but a training program to teach people how to work.

In April 2004 the Association of Conservationist Employees retained a policy consulting firm to help identify problems at the CCC and develop strategies for addressing them. The firm developed a Concept Proposal to Create the California Human Development Corporation which would combine the CCC, the Governor's Mentoring Partnership and the GoServ Programs into one entity. Documents developed for the Association of Conservationist Employees recommend the need for:

- *Improving training and personal development services for staff and corps members*
- *Better assessment of corps members' needs at enrollment*
- *Developing performance measures for corps members for their job skills and personal development*
- *Expanding residential facilities*
- *Securing quality reimbursable work projects*
- *Assessing and restructuring CCC management and administration*

Questions:

11. Have you considered these matters? Have you discussed them with the representatives of the Association of Conservationist Employees? Were there any suggestions in the proposal you believe would be beneficial for the CCC to implement? If yes, are you doing so?

I have considered these matters and have discussed many of them with the Association of Conservationist Employees. In my estimation, many of the suggestions had merit and, since becoming Director, I have made a number of personnel changes and implemented policies, some of which have been similar to what was suggested in the Concept Proposal. Unfortunately, the proposal had no suggestions on how to pay for the suggested improvements, or any suggested methods to restructure the current financial reimbursement model.

I agree wholeheartedly with the Association of Conservationist Employees' interest in maintaining and increasing residential centers where quality reimbursement work can be found. The CCC has three, ongoing residential Capital Outlay projects, and I am actively engaged in maintaining a residential presence in Stockton while our new facility there is being built.

12. Have you established any formal or informal mechanisms for meeting with corps members, line staff, employee groups and management to discuss these concerns? If so, please describe these mechanisms and the results of any meetings.

I have established both formal and informal mechanisms to meet with corpsmembers and staff to discuss the health of the CCC and its future.

Formally, I reorganized the department to implement a clear chain-of-command. The three field district directors are now peers with the headquarters administrative services and operations chiefs, and therefore have equal say in the management of the

department. I hold monthly executive team meetings and will hold a state-wide center directors' meeting in July. Also, I promoted a senior field district director to the Chief Deputy Director position. I strongly encourage all staff to use the chain-of-command to suggest program improvements and voice grievances, and I try to delegate decision making down to appropriate levels and hold managers accountable for their responsibilities.

At two recent executive team meetings I invited the president of the Association of Conservationist Employees to speak with the CCC's executive staff about his suggestions and concerns. I believe those meetings were appreciated by all in attendance, and helped coordinate interest on items ranging from uniform standards to staff training.

Since becoming Director, I have visited 22 of the CCC's 24 centers, and at each center I have spoken with Corpsmembers and staff to varying degrees. I have visited some centers multiple times, and will continue to visit field locations as much as possible. At each visit I encourage staff and corpsmembers to ask questions. I regularly conduct headquarters staff meetings in which I discuss the status of the organization and objectives and I follow those meetings with email summaries to all field staff. I also email budget, legislative, and department status updates to all staff from time to time. I have received much positive feedback from these informal communications and very much look forward to continuing this type of dialogue.

Should you have any further questions, please call me anytime at (916) 445-4411 or email wsemmes@ccc.ca.gov.

Sincerely,



William W. Semmes
Director



May 23, 2005

SENATOR DON PERATA
Chairman Senate Rules Committee
State Capitol, Room 420
Sacramento CA 95814-4900

Dear Senator Perata:

Thank you for the opportunity to share my personal views in advance of your deliberations. I see the Commission as an entity to provide administrative oversight and a public forum for the operations of the Department of Boating and Waterways.

My short term goal is to secure confirmation as a member of the Commission. One of its mandate's in statue is to have at least one commission member from a statewide organization representing recreational boaters. I bring that perspective to the Commission. I believe I am the first commissioner appointed with such a background.

Having been an avid boater on the San Francisco Bay and throughout the 1,000-plus miles of Delta waterways for over twenty years, I am keenly aware of the needs and desires of the recreational boater. I not only recreate on the water, I also live on the water in Discovery Bay, a waterfront community in the Delta. As such, I am also concerned about the environment and the ecosystems we affect. I am active in several yacht clubs and associations, which promote the responsible use of our waterways as a valuable resource.

My long range goal is to provide advice and insight to my fellow commissioners and Staff on the expenditure of funds available through the Harbors and Watercraft Revolving Fund (HWRF) to help alleviate the shortage of available boat storage both on and off the water throughout the state, while improving and repairing the infrastructure that provides safe and reasonable access to the waterways for California's registered boaters which are nearing 1,000,000.

My tenure on the Board of Directors of Recreational Boaters of California (RBOC) and participation as a Delegate to Pacific Inter-Club Yacht Association (PICYA) have provided valuable insight in the activities facing the Department of Boating & Waterways, the Commission and the Legislature. I have served as RBOC's Legislative Chair for the past three years. As such, I bring a wealth of knowledge and information to share with my fellow Commissioners regarding legislation affecting boating/boaters. Coupled with the executive level positions held in the US

MAY 23 2005

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Postal Service; prior to retiring with nearly 39 years of public service, I am also sensitive to the need to assist businesses and commercial interest while providing oversight for the judicious use of our often scarce financial resources.

Again, thank you for the opportunity to share these thoughts with you and your fellow Senators.

Regards,

A handwritten signature in black ink, appearing to read "Lenora S. Clark", with a large, stylized flourish at the end.

Lenora S. Clark

To: Senate Rule Committee

From: Charles P. "Bud" Johnson

Subject: DBAW Commissioner Appointment

To Whom it May Concern:

As a DBAW Commissioner during the past year, I have experienced the common challenge we share, collectively, to provide for the recreational use of our lakes, rivers, bays and coastal waters. This challenge crosses a spectrum of the public and private sector and including, but not limited to, the city, county or district and jurisdictional State departments such as Dept. of Parks and Recreation, State Lands Commission, Dept. of General Services, Dept. of Water Resources and others.

In the short term my goal as a DBAW Commissioner is to insure the development, improvement, maintenance and operation related to small craft harbors, river and lakes projects funded by DBAW annual revenues continue to be utilized prudently. We must include factors such as the increasing population of citizens seeking outdoor recreation on State waterways. As the California demographics change, new types of recreational boating activities are emerging that require innovative resource allocation. To this end the "business as usual" concept is no longer available.

In the long term my goal as a Commissioner is to provide a professional resource to DBAW with an outcome that may yield a closer organizational tie to the various sectors, commissions, departments, etc. outlined in the first paragraph of this letter. If properly thought-out, redundancy may be reduced and an "economies of scale" will prevail.

Sincerely,

Charles P. Bud Johnson

Charles P. "Bud" Johnson, P.E., EdD.

MAY 20 2005



Est. 1977

H. P. PURDON & COMPANY, Inc.

May 18, 2005

747 Golden Park Avenue, San Diego, California 92106
Tel: 619-222-0330 Email: HPPurdon@cox.net

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

RE: Statement of H. P. Purdon for confirmation as member of the Boating and
Waterways Commission VIA FAX: 916-445-0596

Dear Chairman Perata:

This is to respond to your request for a statement outlining my short and long term goals for the commission in the coming years:

As a Commissioner (and recently elected Chairman) of the California Department of Boating and Waterways, I have the fiduciary responsibility to review and analyze the loan applications for small craft harbors and grants for boat launching facilities. My goal is to challenge the viability of each of these loans and grants to insure that the funds are spent properly and the return of those loans is a likely expectation.

Oversight of the Department on a month to month basis with our administration of boating safety, boating education and law enforcement on our waterways would also be part of my short term goals.

During the course of my term(s) as a Commission, I would hope that my overriding long term goal of ensuring continued and enhanced access of the public to the waterways of California is pursued. The publics continued boating participation in a safe and environmentally sensitive manner would also be a long term goal. I would continue to emphasize the importance and expansion of the DBAW endorsed Clean Marina Program (www.cleanmarinaprogramsd.org) and other environmental issues to enhance the publics enjoyment of both salt and fresh water boating.

Sincerely,

H. P. "Sandy" Purdon, Chairman
California Department of Boating and Waterways

MAY 19 2005

CÉSAR A. ARISTEIGUIETA, MD

153

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La Quinta, CA 92253
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911md@earthlink.net

April 22, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Perata:

This letter is in response to your correspondence of 4/7/2005 regarding my Senate confirmation to the Medical Board of California. I am eager to undertake the confirmation process so that I may continue to serve Californians as a member of this important regulatory body.

Attached please find my responses to the thirteen questions posed by the Committee. Although concise, I hope my answers provide an insight into my perspective on the various issues facing the Medical Board.

Please note that my home address has changed since being nominated by Governor Schwarzenegger. My correct address is reflected on the above letterhead.

Thank you very much for your consideration. Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



César A. Aristeiguieta, MD

APR 28 2005

Response to questions posed by the Senate Rules Committee regarding confirmation to the Medical Board of California

Cesar A. Aristeiguieta, MD

1. What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?

I have been serving those in need for 25 years. My extensive experience in leadership, regulatory affairs, and the practice of medicine will allow me to bring technical expertise and a results oriented approach to the activities of the MBC.

I hope that during my tenure at the MBC I can strengthen our core mission of protecting the public. I have concerns that the MBC is currently involved in a variety of mandated activities that are beyond the scope of the Board. At a time when resources are limited, it is important that the MBC and the legislature consider the value and cost of such activities.

I also aim at establishing a process within the scope of the Medical Board that formally addresses medical errors and encourage health professionals to report them. I am concerned that our disciplinary process may be punishing physicians for systems errors that are beyond their control.

2. What do you believe is the highest priority of the MBC? How should this be accomplished?

I believe that the highest priority for the Board is consumer protection, yet our ability save patients from harm is at risk due to the threat of financial insolvency. Immediate action must be taken to cut costs, discontinue programs that do not further the mission of the Board, and consider adjusting the physician licensing fees.

3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?

I think that Julianne D'Angelo Fellmeth and Thomas Papageorge have done an outstanding job documenting the shortcomings of the

APR 28 2005

MBC; however, these should not be a surprise to anyone that has monitored the business of the Board. Most of the MBC's deficiencies were identified by staff and have previously been debated by the Board.

4. What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly (please identify the recommendations by the numbers used in the report).

I agree with the spirit of the recommendations proposed by the Enforcement Monitor, yet my experience has taught me that there are two sides to every story. For example, recommendation # 56 (feasibility of diversion concept) shows a lack of understanding by the Enforcement Monitor of addictions and professional impairment. Failure to expand and strengthen the current diversion program would reduce public safety, not strengthen it.

The Board has developed an implementation matrix to address each and every recommendation made by the enforcement monitor. We are moving quickly to put into practice the most feasible changes first, while also debating the more complex suggestions.

5. What recommendations do you believe are the highest priority?

Recommendations # 1 (lost of enforcement positions) and # 2 (Renewal fees) need the most prompt attention. The financial stability of the MBC needs to be addressed, along with returning our enforcement staff to previous or even higher staffing levels.

6. Do you agree with this problem [enforcement process takes too long, procurement of essential medical records]? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve any delay?

I agree that the enforcement process takes too long. The MBC places the names of physicians under investigation on the enforcement web site at the moment an inquiry is commenced.

Since it takes over 2 years to resolve most investigations, accused physicians face the loss of business and professional reputation, even if later found not to have committed any wrong doing. This amounts to being considered guilty for over 2 years until proven innocent. It is unacceptable. Swift investigation and administrative action will strengthen the standing of the MBC and public safety.

Some of the delays in enforcement are due to record procurement concerns; however, it is clear that the loss of 25 percent of the enforcement positions is also impacting the process. The MBC has already begun to implement penalties against physicians who fail to timely produce requested medical records. We now need the assistance of the legislature to restore the lost enforcement positions.

7. Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?

I support establishing a physician renewal fee that supports the mission of the MBC and restores lost enforcement positions. I also believe that the Board and the legislature need to examine current programs and services. Any expenditure that does not support the intended mission of the MBC should be discontinued, or should be individually budgeted for by the legislature.

8. What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?

I would immediately freeze the Physician Loan Repayment program and ask the legislature to fund it with resources other than license fees. I would also ask the legislature to allow the Board to discontinue activities that are carried out by recognized accreditation bodies (medical school and specialty board evaluation). Finally, I would ask the legislature to transfer regulation of Licensed Midwives, Registered Dispensing Optician, Program Research Psychoanalysts and Student Research Psychoanalysts to the Department of Consumer Affairs.

9. Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hand-off" process? Please explain briefly.

As a former police officer I can personally testify to the effectiveness of the vertical prosecution model. Every modern law enforcement agency has adopted the process because it fosters teamwork between investigators and prosecutors, and it leads to better and more successful cases. I believe the Board must switch to the vertical prosecution model.

10. What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent [pertaining Division of Medical Quality review of proposed decisions by administrative law judges (ALJ)]?

One of the reasons the MBC is an independent body, separate from the Department of Consumer Affairs, is that the investigation and discipline of medical misconduct is very complex. Physician and public member participation and decision making is needed in the process to ensure public protection and impartial perspective. The Board has a good relationship with our ALJ's and we accept most of their decisions. Occasionally an ALJ may not grasp the complexity of a case and the Board stands as the final authority to protect patient safety. This process should not change.

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders? Briefly why or why not?

I do not support disclosing medical malpractice claims as it has been previously proposed to the Board. There is no evidence that medical malpractice claims, by themselves, are a good indicator of medical quality. I do have concerns, however, that the Board may possess significant information on physicians that it is not sharing with patients.

One option is for the Board to develop a web site on physician quality that is separate from our enforcement web site. On that site,

the Board could post all information known on a physician, including malpractice claims, along with a users guide for interpreting the information. The MBC could develop criteria common to quality physicians, and even assign a letter grade to each licensee based on the information known to the Board. Because there are several private sector and trade groups with similar physician assessment products, the Board could simply partner with such groups to make the information available through the MBC web site.

The legislature is currently considering asking the Little Hoover Commission to examine this issue. I oppose this proposal, as I believe the Board has sufficient technical expertise and has heard extensive public testimony on the matter. We simply need to move forward with actionable items.

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?

Please see the answer to question 11.

13. What steps have been taken, and will be taken, to address the issues raised by the Enforcement Monitor [regarding the diversion program]? Do you have recommendations for improvements? If so, please indicate them.

In your letter, the characterization of the Diversion Program is incorrect. The program diverts addicted and mentally ill physicians from the enforcement program with the goal of rehabilitating them. The program both monitors these physicians and stipulates conditions for treatment and the continued practice of medicine. Physicians who fail to meet the conditions of the Diversion Program have their license suspended or revoked. The Enforcement Monitor found significant flaws in the program and its monitoring component. These cannot be taken lightly.

As a physician I devote a significant amount of my professional activities to assessing and treating addicted patients. As a member of the Board, and its Diversion Committee, I am committed to

preserving and strengthening the program so that impaired physicians are quickly identified and treated, and the public is protected. I have seen first hand the value of the program and want to focus on improving it.

The Diversion Program is woefully understaffed and under funded. The recent appointment of new director will certainly benefit the program. Additional funding is needed to hire monitoring staff and caseworkers. I believe that such funding should come from the physicians who participate in the program. There may also be opportunities to partner with the private sector to provide services to program participants.

Hedy L. Chang

APR 28 2005

*17715 Monterey Road
Morgan Hill, CA 95037
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April 26, 2005

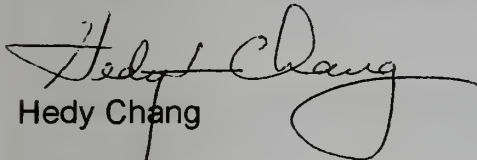
Ms. Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Enclosed are my responses to the questions contained in the letter dated April 7, 2005 from Don Perata, Chairman, Senate Rules Committee.

Please feel free to call me should you have any questions concerning my responses.

Sincerely,



Hedy Chang

Enclosure

VIA OVERNIGHT MAIL

1. What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?
 - 1) To be an informed, effective member of the Board, dedicated to maintaining the philosophy of the MBC, to ensure quality medical practice for the citizens of California.
 - 2) To collaborate with other members of the MBC and staff to insure that the citizens are protected and at the same time the rights of the doctors are respected. It is important that a healthy business environment be maintained to attract and retain the best medical practitioners in the State of California.
 - 3) Implement recommendations stated in the Enforcement Monitor's Report. Improve current enforcement procedures in order to provide results in a more timely manner.
2. What do you believe is the highest priority of the MBC? How should this be accomplished?
 - 1) Public protection is the highest priority of MBC, by ensuring the highest quality of medical practice possible for citizens of California and protecting the consumer from fraud and malpractice.
 - 2) This should be accomplished by upholding licensing requirements that set high standards for incoming doctors and approving only qualified schools of medicine.
 - 3) MBC should in a timely manner investigate and vigorously prosecute offenders; the MBC should also play a role to insure that the public is educated and makes informed decisions.
3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?
Yes.
4. What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly. (Also, please identify the recommendations by the numbers used in the report.)
 - 1) The monitor's recommendations were comprehensive and insightful and should be implemented as soon as practicable in a deliberate, well thought-out manner.

- 2) The Legislature should approve SB 231, which outlines the most important issues included in the Monitor's Report, and initiate a dialogue on issues outlined in the "Recommendations of the Joint Committee on Boards, Commissions, and Consumer Protection and the Department of Consumer Affairs" (dated April 12, 2005).

Five of the most important recommendations relate to:

- a. Raising the renewal fee from \$600 to \$800 biannually. (Recommendation #2)
- b. Vertical Prosecution. (Recommendation #22, #33)
- c. Enforcement of existing laws to regulating the release of medical records. (Recommendation #23, #34)
- d. Diversion Program.
- e. Disclosure issues.

Board should continue its plan and process to discuss and evaluate further implementation.

5. What recommendations do you believe are the highest priority?

The recommendations on:

- 1) Vertical prosecution.
- 2) Increasing the physician license renewal fee from \$600 to at least \$800 biannually.
- 3) Board enforcement of existing laws requiring doctors to release medical records.
- 4) Improvements to the diversion program.
- 5) Upgrading the management information system and addresssing disclosure issues.

6. Delay of obtaining the medical record. Do you agree that this is a problem? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve the delay?

Yes, I agree that the delay of obtaining the records is a problem. The Joint Committee recommendations dated April 12th should be implemented as spelled out below.

- 1) Make a failure to abide by the 15-day limit grounds for mandatory discipline, including summary and temporary suspension of a license until the record is provided under the Board's current Cite and Fine authority.

- 2) Mandate that the Board pursue legal action after a certain number of days.
- 3) Allowing the Board to obtain its attorneys' fees from a physician to reimburse the Board for the cost of obtaining records from recalcitrant physicians.

Additionally, the Board should have an internal monitor report in place as part of the Board's quarterly meeting.

7. Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?

Yes, I do. The last increase was over a decade ago (1994). Additional revenue will enable the Board to maintain existing services adjusting for inflation and address increased demands for services (22% more complaints). Additional resources are needed to implement improvements to the system such as vertical prosecution and more vigorously enforcing existing laws on record retrieval.

Board should also incorporate automatic cost of living adjustments in the fee increase package.

8. What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?

The following should help improve efficiency with nominal additional cost.

- 1) Vertical prosecution: move the investigation unit to attorney general's office. This should improve the efficiency of the team, shorten the time to obtain records, and speed up investigation and prosecution. Saving time saves money. However, this needs to be done with great care in order not to lose the "medical side of the equation."
- 2) An internal monitor program management system should provide information on a quarterly basis on key dates for all cases, i.e. focusing and acting on problem areas improves efficiency and speeds processing.
- 3) Revising the medical records procurement and enforcement policy will also save time and expense.

9. Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hands-off" process? Please explain, briefly.

Yes, I do favor shifting to a vertical prosecution process, as I explained in number 8 above.

10. What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent?

I believe if Division of Medical Quality (DMQ) improves its record-obtaining practices and implements a system of vertical prosecution, the current process will become a more timely and accurate. I believe an independent DMQ for final review is essential to the integrity of the program. It provides a true "due process" for the doctors. Judges and courts do not have the expertise of the seasoned doctors who are members of the Medical Board.

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders? Briefly, why or why not?

I support giving a patient the same access to medical malpractice settlement information, with the exception of "frivolous" lawsuits. When the settlement becomes large, a patient should have the right to know.

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?

I believe other changes are needed in the existing disclosure provision. Large malpractice settlement information and related misdemeanor criminal conviction is potentially critical information for citizens to consider.

However, the California Medical Association and the insurance industry object strongly to the monitor's report's recommendation on "all settlements exceeding \$30,000 should be disclosed on MBC website". I support the current recommendation by the Joint Committee on the Boards, Commissions and Consumer Protection to request that the Little Hoover Commission to study this issue further.

13. What steps have been taken, and will be taken on the Diversion Program, to address the issues raised by the Enforcement Monitor? Do you have recommendations for improvements? If so, please indicate them.

The Board has already:

- 1) Formed a new diversion sub-committee.
- 2) Hired a new diversion program manager and staff members.

Following are the areas to be discussed at the next Board meeting (May 5-6):

- 1) A new tracking system.
- 2) The Quarterly Quality Review reports on Random Drug Screen Monthly Test procedure and diversion program's improvement plan.
- 3) A plan to limit Case Manager's caseload.

- 4) Recommendations for paying the costs associated with attendance in the Diversion Program.
- 5) Reports on all Enforcement Monitor issues for the Diversion Program and plans for addressing each issue.

Serious effort has already been put in on this matter. At the same time, the joint committee's recommendation (SB 231) is to request the Bureau of State Audits be charged with a full review of the Board's Diversion Program. The Board should consider and deliberate on the results of all efforts.

STEPHEN R. CORDAY, M.D.*, F.A.C.C.

*A PROFESSIONAL CORPORATION
DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE AND CARDIOVASCULAR DISEASES

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April 18, 2005

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814-4900

Dear Ms. Sabelhaus,

I wish to thank you and Don Perata for your letter from the Senate Rules Committee as to my viewpoints on the Medical Board of California and major issues concerning this board. I will respond to your questions in a numerical fashion, elucidating the questions at the top of each series of paragraphs.

1. What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?
2. What do you believe is the highest priority of the MBC? How should this be accomplished?

As a practicing physician both in an academic medical center with day to day responsibilities to patients, I hope to bring my expertise and experience to further help the Medical Board of California to be responsive to the needs of our consumers (patients) and to ensure their safety and allow them access to adequate information to ensure that their choice of physician is appropriate to their desires and needs. The highest priority for the MBC is

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the protection of the consumer and this will require continued vigorous enforcement of current rules as well as the adoption of the vast majority of the recommendations that were in the initial report of the enforcement monitor, Julie D'Angelo Fellmeth and Tom Papagorge.

3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?

Yes I do. I believe that the enforcement monitor has spent a great deal of time with great insight into issues that need to be corrected in an expeditious manner. The 65 recommendations are almost all totally adoptable and should be placed into effect as rapidly as can be legally and pragmatically accomplished.

4. What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them?

I largely agree with all of the recommendations in the enforcement monitor's report. I find no significant areas of disagreement and am largely concerned with the speed with which these recommendations can be placed into effect. I believe that delays will only compromise patients and the goals with which the board needs to move forward. For this reason, I am anxious to try and facilitate rapid adoption of these recommendations.

5. What recommendations do you believe are the highest priority?

I believe that most of the recommendations will revolve around increased man-power and assistance which will require financial outlay by the Medical Board because of the increases in expense both with legal assistance from the attorney general's office as well as the tremendous man-power deficits especially in enforcement and also in diversion and other areas which the board is involved with. The delay in raising the licensing fees only further prolongs a time when many of the Enforcement Monitor's recommendations can be placed into effect. For this reason, I strongly believe that the board needs to raise its fees expeditiously. I also believe that once the board has adequate funding most of the other recommendations will be easier to place into effect. The issues which should regain highest priority are actually outlined in the questions below and will be addressed as I further explain my feelings concerning certain of these recommendations as noted below.

6. Do you agree that the delay in obtaining records is a problem for the Medical Board and how should this be addressed?

There is no question that the law requires the medical records to be provided within 15 days of the request. Delaying it past this point should clearly invoke at least a \$1,000.00 penalty per day. That fine should be charged to the physician and if the physician is over a limit, perhaps 30 days, then his license should be temporarily suspended. There is no excuse for delays in providing records as it is largely a simple copying effort and should require little time to produce those records. This, however, will at most provide a reduction from the 66 days on average it takes the medical board to receive the records to 15 days, thus saving us at most 46 days of time in a situation where currently it takes over 2.63 years for a serious complaint to be resolved. This is an unacceptable delay. I have seen many cases where the complaint is longer than 4 years prior to the resolution, as these physicians continue to practice in an unrestricted manner and continue to be a danger to the patients. These time delays need to be seriously shortened. Whether this will require further shortening of the additional days it takes for an investigation to take place or whether the time for resolution can be shortened with more rapid resolution in the courts is unclear at this time, but clearly the many years it requires for the complaints to reach resolution is unacceptable and needs to be shortened to no longer than one year if possible.

7. Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800.00 biennially?

8. What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?

Currently I believe that the board has gradually been handicapped by its current fiscal situation. It is stretched to its limit and past its limit in trying to utilize its limited funds to accomplish its charged task. I do not believe that current resources can be stretched to any significant degree and I strongly believe that \$800.00 is a minimum acceptable amount for the license renewal fees. I do believe that the \$800.00 biennial amount is actually a low ball estimate and to continue to increase the effectiveness of the Medical Board of California in protecting consumers and its continued

operations in an efficient manner that that fee will need to be closer to \$900.00 to \$1,000.00 per biennial (\$450-500/year). Detailed projections as to how this money would be utilized have already been provided by David Thornton in his fiscal projections and these projections are based upon his current expectations. As vertical prosecution and other recommendations which were made by the Enforcement Monitor are placed into effect the need for funds by the Medical Board will only grow in a substantial manner.

9. Do you favor shifting to a vertical prosecution process?

10. What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent?

I do believe that a vertical prosecution process makes sense and would be more efficient than the current situation of handing off cases as they proceed. Nonetheless, this will increase the time utilized from the attorney general's office which represents a significant expense for the California Medical Board. This will require increased funding but nonetheless will greatly enhance the efficiency of the Medical Board in pursuing disciplinary action and should allow the cases to be prepared in a more efficient as well as effective manner and I highly recommend this be pursued as soon as it can be placed into effect. This is clearly the best approach to ensure that decision-making is timely for both public and physician, as well as accurate and independent.

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders?

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician?

Currently I believe that existing disclosure provisions are insufficient and need to be radically reformed. Clearly the public has a right to know about substantial information in a physicians malpractice history, specifically disclosure of civil malpractice settlement agreements and – relevant to the practice of medicine are – which the public should have access to. Gag order agreements in malpractice settlements only serve to hide information from the public and I believe are a disservice to the consumers. The specifics of what and which malpractice lawsuit information will be

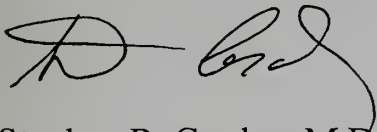
available to the public is suppose to be hopefully addressed by the Little Hoover Commission in the near future.

13. What steps have been taken, and will be taken, to address the issues as to the diversion program?

As you probably already know, a new director of the diversion program has been appointed and he is in the process of revamping the program substantially. The diversion program, however, is dramatically underfunded and will require increased expenditure of funds which need to come from both the members of the diversion program, i.e. physicians who are enrolled in the program, as well as from the California Medical Board's funding. I believe that most of the money for the diversion program should largely come from the members of the program as they are the ones who most substantially will benefit. However, there may be some situations where physicians who are seeking to utilize the diversion program may, because of their situation, be unable to fully participate in the financial obligations to the program. Because of this, the California Medical Board may need to supplement the support that these physicians give to the diversion program and, if so, this funding should be available through increased support from the California Medical Board which likewise will need to come from the increased dues from it's members.

I hope these answers appropriately respond to your questions. If I can be of any further assistance in clarifying my viewpoints, please feel free to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen R. Corday". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Stephen R. Corday, M.D.
Attending Physician and Research Scientist,
Cedars-Sinai Medical Center
Assistant Clinical Professor of Medicine,
UCLA Center for the Health Sciences

SRC:slh

1870-1871. The first year of the war.

1872-1873. The second year of the war.

1874-1875. The third year of the war.

1876-1877. The fourth year of the war.

1878-1879. The fifth year of the war.

1880-1881. The sixth year of the war.

1882-1883. The seventh year of the war.

1884-1885. The eighth year of the war.

1886-1887. The ninth year of the war.

1888-1889. The tenth year of the war.

1890-1891. The eleventh year of the war.

1892-1893. The twelfth year of the war.

1894-1895. The thirteenth year of the war.

1896-1897. The fourteenth year of the war.

GENERAL QUESTIONS***1. What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?***

My goals and objectives as a member of the MBC are as follows:

GOALS:

- A. Support and enforce existing laws and regulations pertaining to the MBC.
- B. Enforce through staff the monitoring functions of the board to properly protect the public.
- C. Comply with legislative mandates and requirements.

OBJECTIVES:

- A. To be an active and productive board member in achieving the above stated goals.
- B. To work in collaboration with board members, staff, and the legislators in implementing recommendations in the Enforcement Program Monitor Report.
- C. To promote and advocate necessary resources for the Medical Board so that it can function at full capacity in protecting the public.

During my tenure, I will work toward making the Medical Board an effective prototype board for others to emulate.

2. What do you believe is the highest priority of the MBC? How should this be accomplished?

I believe the highest priority of the MBC is to conduct a study of peer review reporting, and vigorously identify and discipline potentially dangerous practitioners and implement recommendations to improve the board's Enforcement program. One of the ways the board could accomplish this is by developing a strategic action plan for addressing identified problems, offer solutions, and a timetable when they should be accomplished.

INITIAL REPORT OF THE MBC ENFORCEMENT PROGRAM MONITOR***3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?***

Yes, it does appear that the Enforcement Monitor program has accurately identified problems confronting the MBC, and I believe the identified problems require followup by the board.

4. *What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly. (Also, please identify the recommendations by the numbers used in the report.)*

My assessment of the monitor's recommendations for improvement is that the recommendations are reasonable, well thought out, and when implemented, will improve the effectiveness of the board in many areas.

I do agree with the recommendations, and as a board member since July 2004, I'm participating in their implementation. The board established a task force that has reviewed in detail each of the recommendations, and prioritize them in the order of "must do first". The first 12 of the 65 recommendations are being considered by the full board for approval and they are moving forward. This process will continue until every recommendation has been reviewed for appropriateness, relevance, and feasibility.

5. *What recommendations do you believe are the highest priority?*

I believe the following first set of recommendations are of highest priority: #1, #2, #7, #8, #12, #22, #23, #25, #28, #32, #33, and #48.

ENFORCEMENT ISSUES

6. *Do you agree that this is a problem? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve the delay?*

I do agree that there is a problem. The MBC should immediately enforce the law on the legitimate requests for medical records. I would recommend the board utilize the existing tools to force compliance with medical records laws.

MBC RESOURCES

7. *Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?*

Yes, I have reviewed the financial, operational resources, and the work to be done. I agree that the fee should be increased to at least \$800 biennially. This would give the board the resources needed to carry out its functions in a more effective manner.

8. *What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?*

In 2003-04, the MBC's annual budget was \$38.5 million, of which \$28.2 million, or 78%, was spent on enforcement. Therefore, to address the fiscal problem, one would have to change some enforcement programs. Perhaps look at contracting out the Diversion Program; get expert witness to donate some of their time in reviewing MB cases; the board could begin to levy fines on physicians who ignore legitimate requests for medical records as required by existing law; the board can fine hospitals for not complying with reporting physicians to the MBC that have been disciplined by the medical staffs, etc. These are just a few changes the MBC could make, I believe, utilizing existing resources.

9. *Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hand-off" process? Please explain, briefly.*

I do favor shifting to a vertical prosecution process. After listening and participating in several discussions on this matter, I have come to the conclusion that the vertical prosecution model would be a significant improvement over how it is done presently. The investigators and prosecutors should coordinate their efforts of cases, from the inception to conclusion, and work together in a timely manner for maximum efficiency and effectiveness.

10. *What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent?*

Upon receiving cases, reading them, consulting relevant material pertaining to each case, and considering the ALJ recommendation, I vote on many disciplinary cases against physicians. The current process is to "Adopt the Stipulation", "Non-Adopt the Stipulation", and "Hold for Consideration at a meeting at the DMQ Panel".

A lot of these cases are stipulation cases that have been agreed to between the respondent and the ALJ. In this case, if I do not see anything that warrants my disagreement, I will "Adopt the Stipulation". Having said that, it is the other most difficult cases that could take more time, because we may choose to "Hold for Consideration at a meeting at the DMQ Panel", of which I am a member. At that time, we do the due diligence, i.e. we hear the case in its entirety, including expert testimony. We assess the capability of witnesses, etc., and as a board, we render a decision.

The current system does work, however, it could be modified to speed up the process. One way is to establish a team of two or more MBQ panel members that have relevant background and adequate knowledge of the case, and review the case together with the ALJ for a quicker joint decision. This approach will reduce the time DMQ is holding cases to be heard at future meetings.

On the other hand, if those cases were to go to court, I could envision the cases taking even longer for adjudication.

PUBLIC DISCLOSURE OF MEDICAL MALPRACTICE SETTLEMENT

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders? Briefly, why or why not?

I do support giving patients the same access to medical malpractice settlement information as all other stakeholders. I believe consumers should have the relevant information about a specific licensee, particularly if the medical malpractice settlement is related to the medical service the consumer is seeking. This matter is currently being discussed by MBC, and there is a recommendation for the Little Hoover Commission to objectively study this further. I would expect that the final recommendations of settlement and enforcement will be made in the best interest of the consumer.

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?

No, I believe the existing disclosure provisions should be amended to make ALL malpractice settlements, related to physicians' malpractice history be made available to consumers.

ISSUES RELATING TO THE DIVERSION PROGRAM

13. What steps have been taken, and will be taken, to address the issues raised by the Enforcement Monitor? Do you have recommendations for improvements? If so, please indicate them.

I have been asked to serve on the MBC - Division of Medical Quality / Diversion Committee. At my first meeting on the committee, Ms Julianne D'Angelo Fellmeth, MBC Enforcement Program Monitor, reported on her preliminary findings concerning the Diversion program. After hearing the presentation, I'm very concerned about the issues raised by the monitor. After much discussion, the committee recommended to the full Medical Board of California that we establish an action plan to address each recommendation. As I study the issues further, and participate in implementing the action plan, I am hopeful that the actions that MBC takes on the recommendations will improve the program.

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APR 28 2005

April 27, 2005

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento CA 95814

Dear Ms. Sabelhaus:

I received the letter from Senator Don Perata, Chairman of the Senate Rules Committee, concerning my appointment to the Medical Board of California. This letter lists specific questions that the Committee would like to have addressed by appointees to determine whether or not an appearance before the Rules Committee will be required. The following is a list of those questions with my responses:

1. **What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?**

My primary goal is to work effectively to carry out the Board's mission. I intend to make myself as knowledgeable as possible about all of the Board's programs and to contribute what I can to see that the programs are effective and efficient. There are several challenges the Board faces, particularly in the area of enforcement and diversion, and if the quality of those programs can be maintained and improved, I will be satisfied with that accomplishment.

2. **What do you believe is the highest priority of the MBC? How should this be accomplished?**

I believe the highest priority of the MBC is its Enforcement Program. The heart and soul of the Medical Board is to ensure that California physicians are competent and safe to practice. A substantial amount of the Board's resources are devoted to the Enforcement Program, and this should continue. To accomplish a top-level Enforcement Program will require additional financial resources as well as additional staff.

3. **Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?**

At this point, the Enforcement Monitor has provided the Board with an initial report. I believe that the Enforcement Monitor has accurately identified some of the significant problems that the Board faces, although it is important to note that this is in fact an initial report and her final report is forthcoming.

4. **What is your assessment of the Monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly.**

I believe that the recommendations from the Enforcement Monitor were basically very well researched and concluded. I am pleased to note that many of the recommendations provided by the Enforcement Monitor actually came from direct contact with the Board's staff and are, in fact, in many ways the Board's own self-assessment. Some of the recommendations have already been implemented and many more are underway. Some of the recommendations are simple policy changes while others would require regulation or even statutory changes. I know that the Diversion Committee as well as the Enforcement Committee has developed matrixes that itemize the Enforcement Monitor's recommendations and the level of activity necessary to implement them.

5. **What recommendations do you believe are the highest priority?**

I think the highest priority concerns the Enforcement Program. Specifically. Recommendation #1 is that the loss enforcement positions should be reinstated. The lack of staff has had a significant impact on the Board's Enforcement Program's ability to perform at the levels that the Board would find satisfactory. Recommendation #2 concerns an increase in renewal fees which I am convinced is critical to the Board's overall functioning and particularly as it affects the Enforcement Program.

6. **Do you agree that this is a problem? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve the delay?**

I do agree that the enforcement process takes too long. Part of the delay involves the length of time it takes to secure medical records, and I think that this could be remedied by stricter enforcement of the \$1000/day civil penalty. If this is enforced in a consistent manner, I am sure that records will be forwarded in a timely manner, particularly once the word gets out in the professional community that this is occurring.

7. **Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?**

I definitely support the increase in licensing fees as recommended by the Enforcement Monitor. It is essential to have increased funding to make sure that all of the Board's programs are currently funded and to facilitate the Board again building a sufficient reserve fund.

8. **What changes do you believe the MBC can make within its existing resources to address the fiscal problems cited by the Enforcement Monitor?**

Limited to existing resources, the MBC Enforcement Program could probably improve the way that cases are initially screened as well as an overall enhancement of tracking of cases.

9. **Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hand-off" process? Please explain, briefly.**

Although the Enforcement Monitor made a strong case for shifting to the vertical prosecution model, I don't really feel like I have sufficient information from all of the parties (investigators, deputies attorney general, enforcement staff) to draw a firm conclusion. I am eager to obtain additional information so that I can contribute intelligently to this issue.

10. **What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent?**

Currently, the Board has the authority to either adopt or not adopt a stipulation or a proposed decision by an administrative law judge. The amount of time that this adds to the overall case is actually minimal. In the few cases that the Board does not adopt, then additional time is required for the Board to hear the case at a subsequent meeting. This does allow, however, for the Board to review relevant information including transcripts that hopefully allows them to arrive at a reasonable and fair decision that does focus on public protection. I am personally in favor of the current procedure but would certainly be open to scholarly and informed debate about what approach would be in the best interest of all parties provided that public protection is the common denominator.

11. **Do you support or oppose giving patients the same access to medical malpractice settlement information as to all other stakeholders? Briefly, why or why not?**

Currently, there is a recommendation by Senator Figueroa that would have this question reviewed by the Little Hoover Commission. I favor this question being addressed by an independent source such as the Little Hoover Commission, and I eagerly await the results of their review before the Board takes a position on this matter.

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes you would recommend?

As stated previously, I welcome the review of this issue by the Little Hoover Commission before determining what changes I would recommend regarding current disclosure practices by the Medical Board of California.

13. What steps have been taken and will be taken to address the issues raised by the Enforcement Monitor? Do you have recommendations for improvements? If so, please indicate them.

I agree with many of the Enforcement Monitor's observations regarding the Diversion Program. Because of my concern and interest in this issue, I requested to be appointed to the Diversion Committee. There are significant changes already underway regarding the Diversion Program. Of particular importance, a full-time director of the Diversion Program has been hired. His qualifications are exemplary, and he has hit the ground running to implement many of the changes that were addressed in the Enforcement Monitor's report. This includes significant changes to the monitoring and reporting of urine samples, which is the basic indicator of success in this program. Additionally, other staff has been hired and every aspect of the program is being reviewed and reported to the Diversion Committee. Additionally, Senator Figueroa's SB231 Bill requests that a complete audit of the Diversion Program be undertaken by the Bureau of State Audits. The Diversion Committee as well as the entire Board looks forward to the results of this audit in determining future direction for the Diversion Program.

I am hopeful that my responses to these questions will be useful in determining whether or not it will be necessary for me to appear in person before the Rules Committee. If there is additional information that I may provide, please do not hesitate to contact me. I appreciate the opportunity to respond to the Senate Rules Committee, and I am delighted to have the opportunity to serve the State of California as a member of the Medical Board of California.

Respectfully,

M. R. Greenberg, Ph.D.

Martin R. Greenberg, Ph.D.

LAURIE C. GREGG, M.D.

OBSTETRICS and GYNECOLOGY
2277 FAIR OAKS BLVD., SUITE 355
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1. As a member of the Medical Board of California (MBC) and the Division of Licensing, I hope to scrutinize the licensing of physicians in California and allow quality physicians to practice in this state. I believe that if you license properly there may be fewer disciplinary actions that result down the road. As one of the two female physicians on the board, I look forward to providing a balanced approach to the goal of healthcare consumer protection. As an Obstetrician/Gynecologist, I hope to contribute to the issue of midwife regulation in California. I would like the women in California to have access to midwifery services in a safe and well informed way with medical back up available when needed. Once current issues are solved, I look forward to advocating for increased consumer awareness and education.
2. The highest priority of the Medical Board of California is the protection of healthcare consumers. This protection is accomplished by proper licensing, regulation, and discipline of physicians.
3. I do believe that the Enforcement Monitor has accurately identified problems confronting the MBC. I commend the Monitor for research done within the MBC to identify these issues.
4. Each of the 65 recommendations should be examined and addressed independently by the board. This process has already begun. A special meeting of the MBC was convened shortly after the report was released. We have a working grid of the 65 recommendations showings how we are implementing and addressing each one. We have a subcommittee of the MBC, the Enforcement Committee, which is actively working on the recommendations. I believe that each of the 65 recommendations will have a constructive response and solution.
5. I believe that the highest priority recommendations involve reducing the delay involved with enforcement cases, instituting the vertical prosecution model, requiring that all expert testimony be put in writing, and improving or contracting out the Diversion program. (Numbers 1,2,7,22,23,30,33,56-65).
6. I believe that the time it takes to obtain medical records is a problem. The MBC will no longer tolerate these delays. In the recent Action Report sent to every California physician, a full article was dedicated to the MBC policy of no longer tolerating delays. I believe that financial penalty should be levied once the physician fails to comply within the 15 days deadline.

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7. Physician license renewal fees should be increased to at least \$800 biennially to allow the MBC to reinstate lost positions and function at the level that is required in 2005.
8. To address fiscal problems cited by the Enforcement Monitor, I believe that the MBC could look for steps in the enforcement process that may be duplicated or give advantage to 'the other side'. For example, the MBC expert witness is required to reduce his/her testimony to writing while the expert witness of the defense is not. This is unfair for the team prosecuting for the MBC. Reducing both sides of expert testimony to writing would lead to more settlements, less hearings, more fairness to our prosecutors and money savings for both sides. Although the Vertical Prosecution Method may cost additional funds to initiate, I believe it will lead to less duplication of work and be more successful for the MBC prosecution. In the long run, I believe this may be cost saving. If the Diversion programs remains within the MBC, physicians in the program should cover the full cost of their participation within the program.
9. From my previous answers, it is evident that I am in favor of a vertical prosecution process.
10. Both the public and the physician benefit from a decision-making process that is timely. Many steps in the enforcement process could be shortened and each step should be improved upon. I believe it is important to look at The Division of Medical Quality's (DMQ) review of proposed decisions. If this is a time consuming step without any benefit, it would not make sense. A consideration could be given to having one member of the DMQ and the Executive Director present during the evidentiary hearing to sign off on the case and represent the MBC (instead of the entire DMQ committee voting).
11. I am a strong supporter of healthcare consumer awareness and education. I support giving patients access to medical malpractice settlement information. That said, I feel that information without education about medical malpractice in general and among certain specialties could be misleading. Hospitals, insurers and the MBC know how to interpret and digest this information. The public should have the same ability to interpret the information. We need to educate them about the issues involved when providing the information.

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12. I believe that the existing disclosure provisions used to help a consumer make an informed choice when selecting a physician could be improved. I believe the consumer should be able to access the up to date information online or by phone. The existing disclosures help the consumer to avoid a poor choice; I favor information that would allow the consumer to make a good choice.
13. As mentioned in answer 4 above, many steps have been taken and will be taken in the future to address the Enforcement Monitors Recommendations. I hope to play an integral part in addressing and solving the 65 recommendations that have already been made. I will refrain from adding to the 65 recommendations as they are well researched and valid. From my short time working with the MBC thus far, I realize that California has a large number of hard working physicians, public members and staff that try their best within the means that they have at the MBC and are looking forward to improving in the future. I look forward to working as a team with the MBC, the Legislature, the Enforcement Monitor(s) and the public improve and protect the healthcare consumer in California.

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

April 7, 2005

Mary L. Moran, M.D.
1815 Portola Road
Woodside, CA 94062

Dear Dr. Moran:

As you know, your appointment to the Medical Board of California (MBC) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses.

Prior appointees to the Medical Board have not been required to appear in person before the Rules Committee. However, the board has recently undergone significant scrutiny as a result of legislation passed in 2002. When we receive your responses, we will determine whether you need to appear in person before the Rules Committee or whether your confirmation will be taken up without requiring your appearance.

We'd appreciate your concise responses by April 28, 2005. Thank you for your time and effort.

General Questions:

1. *What are your goals and objectives as a member of the MBC? What do you hope to accomplish during your tenure?*
2. *What do you believe is the highest priority of the MBC? How should this be accomplished?*

Initial Report of the MBC Enforcement Program Monitor

On Nov. 1, 2004, the Enforcement Monitor issued its "Initial Report: Medical Board of California Enforcement Program Monitor," pursuant to legislation (SB 1950-Figueroa, Chapter 1085, 2002). The report proposed 65 recommendations to significantly change the manner in which physicians are regulated and disciplined. The final report is due November 1, 2005.



Questions:

3. *Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?*
4. *What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly. (Also, please identify the recommendations by the numbers used in the report.)*
5. *What recommendations do you believe are the highest priority?*

Enforcement Issues

The Enforcement Monitor found that "the enforcement process takes too long to protect the public," saying the average time for a serious complaint to be resolved is 2.63 years. Physician delays in complying with investigators' requests for medical records was described as a major factor contributing to the length of the process. The law requires that physicians must provide investigators with a patient's medical records within 15 days of a request. Failure to do so within the time period generally subjects a licensee to a civil penalty of \$1,000 per day.

On this issue, the Enforcement Monitor found that "[t]he lengthy waiting time for the procurement of essential medical records is among the greatest problems facing MBC's district offices and among the principal sources of overall case processing delays." The report further indicates that sanctions are rare. The Enforcement Monitor recommends that the MBC enforce the existing law requiring the MBC to review within the timeframe.

Question:

6. *Do you agree that this is a problem? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve the delay?*

MBC Resources

The MBC is funded from physician license fees and other sources, such as fines. The Enforcement Monitor's report said the board's resources are inadequate. With respect to license fees, physicians pay \$300 per year in licensing fees (a \$600 biennial renewal fee). The Enforcement Monitor suggests lifting the statutory ceiling on the biennial renewal fee from \$600 to at least \$800 to pay for support service levels equivalent to those of 1994.

The Enforcement Monitor also noted that in 2004 "MBC's enforcement program staff consists of 20 fewer positions than it had in 1991-92, when it received 22% fewer complaints and took 75% fewer disciplinary actions."

Questions:

7. *Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?*
8. *What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?*

Coordination between the Investigator and Prosecutor: The Vertical Prosecution Model:
In the MBC's current prosecution process, the investigator works alone and then hands the case to the attorney general for prosecution. This process has been criticized as inadequate and inefficient. The Enforcement Monitor recommends switching to a system in which an MBC investigator and an attorney general prosecutor work together from the start of a case and coordinate their work. (This is known as "vertical prosecution.")

Question:

9. *Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the "hand-off" process? Please explain, briefly.*

Division of Medical Quality: Review of Proposed Decisions: The Division of Medical Quality (DMQ) is the enforcement arm of MBC. But the current system of making decisions in disciplinary cases against physicians has been criticized as time-consuming and requiring decision makers to relearn the details of a case without having attended the evidentiary hearing, without the benefit of expert testimony and without the opportunity to assess the credibility of witnesses. It has been proposed in the past that the Division of Medical Quality cease reviewing proposed decisions and instead turn the task over to an administrative law judge for a final agency decision, subject to review by the courts. It is argued that this would streamline the process and expedite a decision for the benefit of the licensee and the public.

Question:

10. *What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent?*

Public Disclosure of Medical Malpractice Settlements

Under existing law, specific licensee information must be disclosed to the public. The board is authorized to disclose civil malpractice settlements to patients only in limited circumstances. It is prohibited from releasing the actual dollar amount. Since 2003, the Enforcement Monitor found, the disclosure of settlements has occurred only in the

cases of seven physicians. But other interests – hospitals, medical malpractice insurers and the board itself – are able to obtain a physician's complete malpractice history.

Questions:

11. *Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders? Briefly, why or why not?*
12. *Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?*

Issues Relating to the Diversion Program

MBC's diversion program routes substance-abusing physicians out of the enforcement program and into the diversion program where they are monitored but not intended to be treated. Participation is confidential. Unless a complaint has been made against a participant, the board's enforcement program will not know that the physician has been diverted. But the program came under heavy criticism from the Enforcement Monitor, who asserted that "[a]ll of the program's most important monitoring mechanisms are failing, and there are an insufficient number of internal quality controls to detect those failures." The monitor also said that the "program is so understaffed that staff could not correct the failures in its monitoring mechanisms, even if they knew about them."

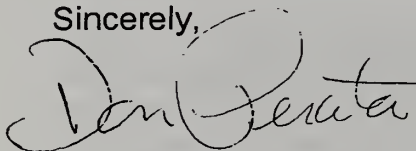
Question:

13. *What steps have been taken, and will be taken, to address the issues raised by the Enforcement Monitor? Do you have recommendations for improvements? If so, please indicate them.*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

cc: Medical Board of California

DP:SK:dc

Senate Rules Committee Questionnaire

Mary Lynn Moran, M.D.
Woodside, California
April 27, 2005

1. My goal as a member of the Medical Board of California is to protect the Public by ensuring that medical care in California adheres to the highest standards. I hope to see the Board restore public faith in the Medical Profession by identifying those individuals who are a danger to the public or who have betrayed the public trust. On the other hand, I feel that it is equally important to ensure that physicians are not unduly penalized if reasonable standards have been upheld since that is a negative reinforcement for both practitioners and the public. As an individual who has been involved in clinical medicine for 20 years and who has been surrounded by the medical profession all of my life, I believe that I have a deep understanding of the art of medicine and the importance of upholding the Hippocratic Oath. I am actively involved in the Board Certification committee as well as all levels of Continuing Medical Education for my professional organization, so I feel that I have an active awareness of the current standards of practice.
2. The highest priority of the MBC is increasing the efficiency of processing complaints. The public should know that we take their concerns seriously and that we will always do our best to serve their interest in a timely fashion. We must, however, be given the resources to deliver on that promise. The license fee hike of \$100/year is a modest request but will help defer the cost of providing that service. The staff cutbacks previously imposed on the MBC need to be reversed. I believe that there could be improvements made in the structure of the board to improve efficiency.
3. The Enforcement Monitor report was very thorough and accurate. The tone with which it was presented to the Board and the way the public perceived it unfortunately seemed to indicate a lack of competency on the part of the Board itself. Obviously the situation is much more complicated than that, as is spelled out in the Report. Many of the shortcomings are related to a lack of resources.
4. I believe that the recommendations by the report are very sound on the whole. They come at a time when the basic structural and budgetary support of the Medical Board as well know it are very much in limbo during this time of overhaul. I think that at the very least we should uphold the system currently in place with improved efficiency and re-installation of basic staffing needs. I am greatly concerned about the possibility of further diminishing support for an effective Diversion Program. We need to give more attention to improving the system rather than abandoning our efforts. Other improvements in efficiency include the vertical prosecution model which may appear to be more costly at the outset but should generate such improved efficiency in timeliness that the costs will be made up in the end.

APR 27 2005

5. The most important recommendations include the restoration of staffing and financial resources. We cannot begin to improve our protection of the Public with the currently overburdened system that is in place. I am actually very impressed that it works as well as it does. This is solely a reflection of the dedication of the current staff.
6. I do believe that the problem of record procurement should be addressed more aggressively. Physicians have a lot on their plates, as do all busy professionals. Unless you make it clear to physicians that timely record procurement is serious business, they will not make it their priority. The best way to send that message is to impose strict, enforceable, reasonable deadlines. Fines should be imposed for delays and a possible charge of "obstruction of justice" should be considered for egregious cases.
7. The fees most definitely need to be increased. They haven't been raised in many years while the cost of doing business continues to increase. We are severely handicapped in so many ways. The loss of staffing is an obvious problem, as is the inability to pay expert witnesses anything close to the usual and customary fees expected for those services. Even with medical reimbursements continuing to decline in the state, I believe the proposed recommended increase is very modest.
8. Within the existing resources of the MBC, I believe we could operate more efficiently if we imposed fines on physicians for delaying record procurement, focused solely on the oversight of the Medical Profession while not expending time and resources on some of the paraprofessional groups that could be handled within another department perhaps more expeditiously. Perhaps fewer members of the Enforcement Division need to be Officers of the Peace. It does require a great deal of resources to train them if they are not already peace officers. As positions come up within that department, perhaps we could see if replacing some positions with employees who are not sworn peace officers and see if the department can still function adequately.
9. Since efficiency of resources is paramount to improving the performance of the Medical Board, any measure that helps accomplish this goal should be considered. The vertical prosecution model seems to offer significant decrease in the time and resources required to bring a case to its conclusion.
10. I believe following the basic recommendations such as enforcing a timely procurement of records, improving staffing, and switching to a vertical prosecution will improve timeliness. To maintain the accuracy of the process it is importance to continue to have a predominance of physicians actively practicing within the current medical environment as members of the Board. Governor Schwarzenegger seems to have taken great pains to ensure that the current Medical Board is well balanced and heterogeneous. The non-physician mix is equally as qualified and diverse and gives very thoughtful and intelligent input from the lay perspective. It is important to maintain a system of checks and balances which seems to currently exist by having decisions made both by physician/patient expert advocates (the Board) as well as legal experts (the ALJ). I feel that while our backgrounds may all be different, we share the same goal of protecting the public while evaluating cases in a just and fair manner.

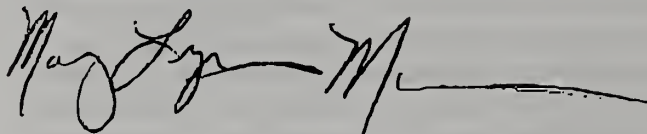
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11. I do not believe that giving patients unlimited access to malpractice settlements is wise. I feel that the net effect would be to create more anxiety, confusion, mistrust than would be necessary. Patients are not in a position to accurately weigh the significance of a settlement in many cases. Certain physicians are in a position where a lawsuit at some point in their career is inevitable because of the nature of the medicine that they practice, the location of their practice, or an affiliation with other high-risk specialties. It is not always a reflection on their professional competence or integrity. For example, neurosurgeons, obstetricians and breast radiologists are often sued of because the nature of the disease they treat or patients they care for. They can be the most highly skilled practitioner and still have several settlements or lawsuits. Malpractice Insurance carriers will often opt to settle, as will hospitals to decrease the overall cost of doing business. To do otherwise, would inevitably raise the already exorbitant cost of healthcare under the current tort system. Making patients more responsible for sorting out information that they do not have the background to interpret would be very harmful to everyone.
12. It is very important to disclose information to the public that will enable them to make an informed decision. I believe that the current system does, on a limited basis, enable patients to view information that will protect them from physicians with a history of errant behavior. Unfortunately, as discussed above, giving too much information can be as harmful as too little. Patients need to be aware of the limits of the disclosure system so that they don't have blind faith in the information they receive on the MBC site. They should also be informed of other ways to make a decision about the quality of their physician and about ways to make more informed decisions about their own healthcare in general.
13. The Board has taken the Enforcement Monitor Report very seriously. We have had several discussions and meetings to address the issues raised. The authors of the report have attended all of the last several meetings. It is clear that we see the Enforcement Monitor as our ally in enabling us to serve the Public to the fullest capacity. An additional meeting was held in January for the sole purpose of discussing the Report. Members of the Board have been working with Senator Figueroa to pass legislation that will enable us to begin the process of reform.

In summary, despite the fact that the Medical Board is being closely scrutinized on all sides, I have not seen any negative impact on the way the Board is carrying out its duties. On the contrary, I think that it has inspired us to rise to the challenge before us. We want to be part of the solution, not part of the problem. That is precisely why I sought a position on the Medical Board. As someone who grew up in a family of doctors, I cannot go to my grave without feeling like I did something to keep Medicine a noble profession of caring, competent, compassionate individuals. I have been extremely impressed with the integrity, intelligence, and commitment of the members of the Board since I have had the privilege of serving with them since last September. I feel very proud to be counted among them. They are a group that is above all else passionate about doing their job well to protect the Public and maintain the integrity of the Medical Profession. Thank you for allowing me to serve among such esteemed individuals.

Sincerely.

Mary Lynn Moran, M.D.

A handwritten signature in black ink, appearing to read "Mary Lynn Moran", followed by a long horizontal flourish.

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